

AGENDA BILL

Beaverton City Council Beaverton, Oregon

SUBJECT: Appeals (APP 2018-0001, APP 2018-0002) of the Director's Interpretation Decision that the Beverage Container Redemption Center Use is Permitted in the Community Service Zoning District DI 2017-0003

FOR AGENDA OF: 06-19-18 **BILL NO:** 18135

Mayor's Approval: Denny Dale

DEPARTMENT OF ORIGIN: CDD CT

DATE SUBMITTED: 06-12-18

CLEARANCES: City Attorney PL
Mayor's Office AS
Planning AS

PROCEEDING: PUBLIC HEARING

EXHIBITS:

1. City Council Memo
2. Director's Interpretation
3. Attachment A to DI 2017-0003
4. Appellants' Submittal Materials
5. Applicant's Submitted Materials

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

Based on the facts and findings presented in the Director's Interpretation Decision, the Appeal Information, and staff memoranda, staff Recommends Denial of APP 2018-0001 and APP 2018-0002 Appeals of Director's Interpretation for Oregon Beverage Recycling Collective Beverage Container Redemption Center (DI 2017-0003). This recommendation requires the City Council to make particular findings specifically on the applicable approval criteria found in the Beaverton Development Code, Section 40.25.15.C.1-6.

HISTORICAL PERSPECTIVE:

On April 30, 2018, the Community Development Director issued a decision on an application to determine whether the Beverage Container Redemption Center (BCRC) operating at 9307 SW Beaverton-Hillsdale Highway is permitted by the Beaverton Development Code (BDC) to locate in the Community Service Zoning District.

The BCRC was originally granted a Design Review Compliance Letter on February 22, 2017, for modifications to the exterior of the building. This land use decision was appealed to the Land Use Board of Appeals, which remanded the decision to the City and identified the Director's Interpretation application as the appropriate process for determining whether the BCRC use is permitted by the BDC as a permitted use in the Community Service District.

INFORMATION FOR CONSIDERATION:

The applicant has provided a limited waiver of the 120-day processing period as mandated by the Development Code and State law. The limited waiver extends the 120-day deadline to August 8, 2018. The Council Final Order represents the final written decision of the City on this matter as described by ORS 227.178.



MEMORANDUM

EXHIBIT 1

TO: City Council

FROM: Anna Slatinsky, Planning Division Manager

DATE: June 12, 2018

SUBJECT: Appeals (APP2018-0001 and APP2018-0002) of OBRC Director's Interpretation (DI2017-0008)

DECISION CRITERIA: Beaverton Development Code, Section 40.25.15.1.C

INTRODUCTION

This memorandum concerns the appeal of a Director's Interpretation that the Beverage Container Redemption Center operating at 9307 Beaverton Hillsdale Highway is permitted in the Community Service Zoning District. The Director's decision was appealed by two separate groups, one represented by Michael Neff (Haglund Kelley) and one by E. Michael Connors (Hathaway Larson), that are referred to in this document as the appellants. This memorandum summarizes the contentions of the appellants and provides staff analysis, discussion and recommendations for Council action in response to the appeals.

ANALYSIS AND FINDINGS

Section 50.70.2.E. of the Beaverton Development Code (BDC) instructs the appellant to identify the specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

The appellants' general contentions as stated in their appeal statement are below:

Contention No. 1 – The Director erred in concluding that the BCRC is not a "Recycling Center" as this is defined in the Beaverton Development Code.

Contention No. 2 – The Director erred in concluding that the BCRC use is "substantially similar" to other uses in the Community Service Zoning District.

Contention No. 3 – A Director's Interpretation is not the appropriate process to determine whether the BCRC use is permitted in the CS Zoning District.

Contention No. 4 – The Director's Decision is not consistent with the Beaverton Comprehensive Plan.

Contention No. 5 – The Land Use Board of Appeals remand rendered the BCRC land use approval void, and it is therefore operating in violation of the BDC.

Appellant Contention No. 1(a-d) – The Director erred in concluding that the BCRC is not a “Recycling Center” as defined in the Beaverton Development Code.

Appellants allege that the Director reached an incorrect interpretation of the term “Recycling Center” in the following manner:

- (a) failure to apply a plain language standard and dictionary definitions to the meaning of “Recycling Center”;
- (b) failure to consider regulatory and industry definitions;
- (c) ignoring similarities between the BCRC and Salvage Yards and Solid Waste Transfer Stations; and
- (d) inappropriately using scale and intensity, enclosure of operations, customer profile, and impacts on the surrounding area to assess how BCRC recycling activities should be considered on a spectrum between widespread recycling activities and “Recycling Center” industrial-level activities.

Discussion:

A full discussion of the Director’s deliberation with regard to the meaning of the “Recycling Center” terminology is contained in Attachment A of the DI decision (pp. 4-7). Since the BDC does not define “Recycling Center” in Chapter 90 and the dictionary definition is extremely broad, a plain language reading is an important part of the interpretation.

With regard to industry definitions, many have been written with regional-scale waste systems in mind, and are not intended to dictate local land use treatment. Nor do they contemplate BCRC operations, which were formally recognized in Oregon Statute in 2011. However, the applicant has submitted a letter from the chairs of the Oregon Senate Committee on Environment and Natural Resources and the House Committee on Energy & Environment, Senator Michael Dembrow and Representative Ken Helm, respectively, that explicitly confirms that the legislative intent for the BCRC model was not industrial (Exhibit 6).

Scale, intensity, potential impacts, and enclosure are all characteristics of land uses that are regulated by the BDC, and commonly used across jurisdictions to differentiate among similar uses that may occupy residential, commercial, and industrial zoning districts at different scales. For example, Washington County Community Development Code 430-115 employs both scale and enclosure characteristics to define “Recycling Centers.”

*A recycling center is any lot or portion of a lot greater in size than **three hundred (300) square feet**, used for the purpose of **outdoor** storage, sorting, handling, processing, dismantling of materials that cannot, without further reconditioning, be used for their original purposes [emphasis added].*

The Director’s review, in Attachment A, of the characteristics above shows that the BCRC use has more in common with the uses in the Community Service Zoning District than Salvage Yards and Solid Waste Transfer Stations, even though all of these facilities do share the characteristic of handling waste material. Land use regulation must consider uses comprehensively, rather than simply choosing one characteristic to dictate the regulatory approach. Consider, for example, the term “handling food.” Handling food, like handling waste

material, occurs in industrial, commercial, and residential zones. Food handling occurs along a continuum from home gardening and cooking, to restaurant cooking and in grocery stores of all sizes, to industrial baking and produce distribution operations. While all of these activities have food handling in common, they are regulated differently because of their scale, users and impacts.

Therefore in regard to Contention No. 1(a-d), the Director finds the appellants' contention does not show that an error occurred as a matter of fact, law or both.

Appellant Contention No. 2 (a-d) – The Director erred in concluding that the BCRC use is “substantially similar” to other uses in the Community Service Zoning District.

Appellants allege that the Director erred in finding that the BCRC use is “substantially similar” to other uses in the Community Service Zoning District because:

- (a) the standard applied was too general, and set too low a bar by not comparing the BCRC use to another use of the precise type and nature;
- (b) the scale of use, impacts, customer type, and transportation characteristics do not indicate substantial similarity, but are arbitrary factors that should not be considered;
- (c) the longtime presence of bottle redemption uses at grocery stores is irrelevant to this finding because they are accessory to the primary retail store or grocery store use; and
- (d) the BCRC use is more similar to the “Recycling Center” use than to existing uses in the CS district.

Discussion:

The Director employed a detailed and careful approach in consideration of whether the BCRC use is “substantially similar” to uses in the Community Service Zoning District. (Attachment A, pp.7-8.) In addition to noting the longtime presence of bottle redemption activities in the grocery stores and convenience stores permitted in the CS district, the Director considered detailed information about how the characteristics of the BCRC use compare to the full range of uses that the purpose statement in BDC 20.10.10 for the CS district encompasses, and the types of businesses that are currently operating in locations where the CS district is mapped.

This comprehensive approach considers the many facets of different uses, including scale, users, and transportation impacts, in order to group and regulate uses effectively.

Therefore, in regard to Contention No. 2 (a-c), the Director finds the appellant's contention does not show that an error occurred as a matter of fact, law or both.

Appellant Contention No. 3– A Director's Interpretation is not the appropriate process to determine whether the BCRC use is permitted in the CS Zoning District.

Attorney Neff contends that the Director's Interpretation process is not valid for determining whether the BCRC use is allowed to operate in the CS Zoning District by the BDC, and that it amounts to a “DeFacto Legislative Amendment.” (APP2018-0001, Attachment C, No. 4.)

Response:

Before LUBA, petitioner Glennwood 2006, LLC, represented by Attorney Connors, argued that the only procedural mechanism the City has available to conclude that a BCRC may be approved in the CS District is BDC 10.50, which allows the Director to find unlisted uses are

“similar to allowed uses.” LUBA agreed. ___(LUBA No. 2017-027, September 21, 2017), pp. 5-6, 10. Subsequently, the applicant submitted a Director’s Interpretation application in order to resolve, through the Type 2 process, the question of whether the BCRC use is allowed in the Community Service Zoning District.

BDC Section 40.25.05 specifies the Director’s Interpretation application as an appropriate avenue for “address[ing] new uses that come into existence over time.” While this application would normally be submitted concurrently or prior to other needed development approvals, such as the Design Review Compliance Letter the OBRC submitted on December 21, 2017, the LUBA remand imposed a new procedural requirement, unforeseen by the applicant and the City, and justifies an exception in this case.

Amending the text of the BDC would also be an available process to regulate a new use, such as the BCRC. However, the potential for a text amendment does not preclude use of the Director’s Interpretation process.

Conclusion:

Therefore, in regard to Contention No. 3, the Director finds the appellant’s contentions do not show that an error occurred as a matter of fact, law or both.

Appellant Contention No. 4 (a-f): “The Director’s Decision is not consistent with the Beaverton Comprehensive Plan.”

Attorney Neff alleges that the Director’s Interpretation decision is not consistent with the following goals and policies of the Beaverton Comprehensive Plan:

- a) *3.2.1.a iii Provide a set of residential infill guidelines and standards that encourage compatible infill development, consistent with the following standards:*

iii Manage transitions between different uses.

- b) *3.4 b Ensure that land use planning, notification, and public involvement procedures and processes are inclusive and provide meaningful opportunities for engagement by all community members.*
- c) *3.7.1 a Over time, new development and redevelopment should improve accessibility and comfort for non-auto modes.*
- d) *3.7.3 a Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access, and parking.*
- e) *8.8.1 a The City shall support efforts to reduce the amount of solid waste generated from household, industrial and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements.*
- f) *9.1.1 d Identify and protect the city’s employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones.*

Discussion:

The Director provided a discussion of Beaverton Comprehensive Plan policies identified in contention 8.8.1.a and 9.1.1.d in the response to Criterion 3. (Attachment A, pp.1-2.)

Goal 3.2.1 relates explicitly to residential infill development, and is not applicable here, since the BCRC is not residential.

Policy 3.4 b calls for an opportunity for public involvement that is afforded by this ongoing appeal process.

Policy 3.7.1 a cannot be interpreted to forbid auto-oriented development. The CS district is intended to accommodate businesses typically located along the city's primary commercial corridors, primarily arterials. A variety of uses that benefit from access to arterials are allowed in this zoning district, including drive-up restaurants and large-scale retail including grocery stores and big-box retail. Attorney Neff's interpretation of this aspirational policy would prohibit the BCRC use anywhere in Beaverton, not just in the CS district.

Policy 3.7.3a is not violated, since there is no need to create additional development standards or conditional uses. The Director's Interpretation process exists to make available the similar use analysis occurring in this matter. As contemplated by BDC 40.25.15.1.C.4, the Director has determined that BCRC use is substantially similar to other permitted uses in the CS zoning district.

Policy 8.1.1 a is not violated, because the legislature has separated beverage container redemption from other source reduction and recycling activities and provided a different means to address it.

Policy 9.1.1 d is simply not applicable to the facts of this application.

Therefore in regard to Contention No. 4 (a-f), the Director finds the appellant's contentions do not show how an error occurred as a matter of fact, law or both to this specific approval criterion.

Appellant Contention No. 5: The Land Use Board of Appeals remand rendered the BCRC land use approval void, and it is therefore currently operating in violation of the BDC.

Response:

It is accepted common practice for local governments to allow property owners to apply for permits to legalize existing development that has occurred without permits. In this case, shutting down a business that had approved permits that were appealed and resulted in LUBA remands for additional findings would be inconsistent with this practice.

ORS 227.181 supports the view that the city is not expected to shut down an applicant that is between a remand and new action by the city. The statute gives the applicant 180 days to request that the city proceed with the application on remand and gives the city 120 days to complete its process, which seems to contemplate that the city would not take action while the applicant and the city are trying to correct whatever problems LUBA found.

The appellant has neither identified a specific code section, finding or condition under this contention that the city's process is in error as a matter of fact, law or both, nor identified any evidence relied on to allege the error as is required per Section 50.70.2.E. The Director made her decision based on the findings of fact provided in the application, the approval criteria found in Section 40.25.15.1.C, and the testimony provided during the public comment period.

Conclusion:

Contention No. 5 fails to meet the requirements of Section 50.70.2.E of the Beaverton Development Code and is not applicable.

SUMMARY:

The Director finds that none of the appellants' contentions demonstrate that any Director finding or condition is in error as a matter of fact, law or both, and that appellants have not provided new evidence to support an allegation of error, as required by BDC 50.70.2.E.

RECOMMENDATION:

Based on the facts and findings presented in the Director's Interpretation decision, the Appeal Information, and the Director's memoranda, the Director recommends **Denial of APP2018-0001 and APP2018-0002.**

At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:

- A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
- B. Reverse or affirm the decision under appeal, with or without conditions or changes.
 - 1. If the decision making authority takes action pursuant to Section 50.70.9.B., the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.70.10.; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
 - 2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
- C. Remand the decision to the decision making authority for further proceedings consistent with the decision on appeal provided that the appellate decision making authority first determines whether the remand would conflict with the City's obligation under ORS 227.178 to issue a timely final decision. If the decision is to remand, the purpose of the remand, including any specific procedures or subjects to be addressed shall be directed to the decision making authority.



Community Development Department
Planning Division
12725 SW Millikan Way
Beaverton, OR 97006
General Information: (503) 526-2222 V/TDD
www.BeavertonOregon.gov

EXHIBIT 2

To: Interested Parties
From: City of Beaverton, Community Development Department
Date: April 30, 2018
Subject: **DI2017-0003 Director's Interpretation for Oregon Beverage Recycling Center (OBRC) Beverage Container Redemption Center (BCRC)**

Please find attached the Notice of Decision for the Director's Interpretation concerning OBRC – BCRC, case file number DI2017-0003. Pursuant to Section 50.40.11.E of the Beaverton Development Code, the decision for DI2017-0003 OBRC – BCRC is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Beaverton Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DR2017-0003 is 4:30 p.m., Monday, May 14th, 2018.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed at the Beaverton Planning Division, Community Development Department, 4th Floor, Beaverton Building/City Hall; 12725 SW Millikan Way between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. For more information about the case file, please contact Anna Slatinsky, Planning Division Manager, at (503) 526-2429.



**NOTICE OF DECISION
DIRECTOR'S INTERPRETATION
OREGON BEVERAGE RECYCLING COOPERATIVE (OBRC)
BEVERAGE CONTAINER REMPTION CENTER (BCRC)**

DECISION DATE: April 30, 2018

TO: All Interested Parties

FROM: Cheryl Twete, Community Development Director

CASE FILE NO: DI2017-0003 OBRC - BCRC

LOCATION: The subject property is addressed as 9307 SW Beaverton-Hillsdale Highway and is identified as Tax Lot 4100 on Washington County Assessor's Map 1S1-14AB.

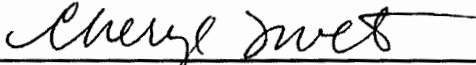
SUMMARY: In response to the opinion issued by the Oregon Land Use Board of Appeals (LUBA, No. 2017-027), and the applicant's request for a Director's Interpretation application sought by the applicant, the Community Development Director has considered all materials submitted to the record and hereby makes this interpretation in support of the BCRC, finding it to be substantially similar to a use currently allowed in the Community Service zone, based on the facts and findings stated herein.

PROPERTY OWNER/APPLICANT: Stephanie Marcus, Jules Bailey
Oregon Beverage Recycling Cooperative
3900 NW Yeon Avenue
Portland, OR 97210

APPLICANTS REPRESENTATIVE: Michael C. Robinson, Garrett H. Stephenson
Schwabe, Williamson & Wyatt
1211 SW 5th Avenue, Ste. 1900
Portland, OR 97204

APPLICABLE CRITERIA: Director's Interpretation - BDC Section 40.25.15.1.C
Authorization for Similar Uses – BDC Section 10.50

AUTHORIZATION:



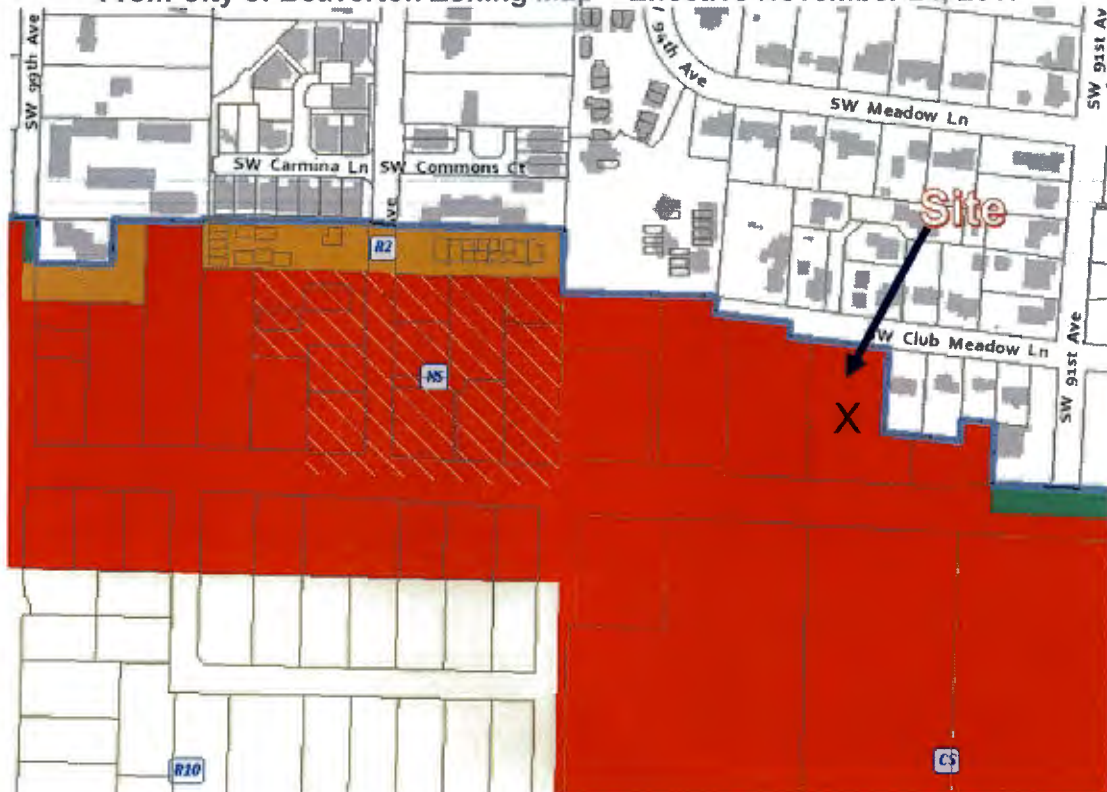
Cheryl Twete
Community Development Director

Zoning/Vicinity/Aerial Map

Aerial Photo from 2016



From City of Beaverton Zoning Map – Effective November 24, 2017



Washington County Zones in Vicinity



City of Beaverton area

BACKGROUND

Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>120th Day*</u>	<u>365th Day**</u>
DI2017-0003	December 21, 2017	January 10, 2018	May 10, 2018	January 10, 2018

* Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application was determined to be complete or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise.

** Pursuant to ORS 227.178, the total of all extensions may not exceed 245 calendar days after the initial 120 calendar days. This is the latest date by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Community Service (CS)	
Land Use Designation	Community Commercial (CC)	
Current Development	Beverage Container Redemption Center	
Site Size	The subject property is approximately 38,717 square feet	
NAC	Denney Whitford / Raleigh West	
Surrounding Uses	<u>Zoning:</u> North: Washington County R-5 South: City CS (Community Service) East: City CS / Washington County OC West: City CS	<u>Uses:</u> North: Single Family Residential South: Commercial East: Single Family Residential / Commercial West: Commercial / Veterinary Hospital

Table of Contents

Attachment A – Analysis and Findings for Director Interpretation

EXHIBITS

Exhibit 1. Materials by Beaverton Staff

- 1.1** LUBA Final Order and Opinion No. 2017-027
- 1.2** City of Beaverton Design Review Compliance Letter dated February 22, 2017
- 1.3** Beaverton Police Department statement dated April 9, 2018
- 1.4** Environmentally Conscious Recycling Renewal Application dated June, 2016
- 1.5** Sample online listings of Recycling Center products April 27, 2018

Exhibit 2. Materials Submitted by the Applicant

- 2.1** Combined application and materials package prepared by the applicant dated December 21, 2017
- 2.2** Existing Condition Traffic Analysis, prepared by Mackenzie dated March 20, 2018
- 2.3** OLCC orders and Graphic illustration of current Convenience Zone radius approved by OLCC for Beaverton store and current Convenience Zone approved for the Tigard store at 14411 SW Pacific Highway
- 2.4** Letter in response to public comments received, dated March 6, 2018
- 2.5** Updated review of zoning district locations of OBRC facilities in other cities, received March 21, 2018

Exhibit 3. Materials Received from the Public

Pursuant to Section 50.40.3.I of the Development Code, the comment closing date for written comments from the public, other than the applicant, was February 7, 2018.

- 3.1** E-mail dated February 7, 2018, by Joel Schoening, 3900 NW Yeon Ave
- 3.2** Letter dated January 5, 2018, by Meadow Park Middle School, 14100 SW Downing St
- 3.3** Letter dated February 7, 2018, signed by Tom Powers, 5715 SW Illinois
 - Christy Splitt, Portland, Oregon
 - Chris Parta, 13150 SW Haystack Dr.
 - Annika Read, 9180 SW Camille Terrace
 - Heidi Eggert, 9180 SW Camille Terrace
 - Michael Achterman, 1725 NW 131st Ave
 - Lauren Garrett, 7775 SW Maple Dr
 - Tennell Dietzman, 4285 SW Laurelwood
 - Sara DeNezza, 8670 SW Birchwood Road
 - Jon-Paul Praisler, 8065 SW Maple Dr

- 3.4** E-mail and letter dated February 7, 2018, by Mike Connors, 1331 NW Lovejoy St., Suite 950
- 3.5** Letter dated February 7, 2018, by Michael G. Neff of Haglund Kelley LLP, 200 SW Market Street, Suite 1777
- 3.6** E-mail dated February 7, 2018, by Richard Skayhan, 4820 SW Chestnut Place
- 3.7** Letter dated January 18, 2018, by Trisha McPherren, 9115 SW Club Meadow Lane
- 3.8** Letter dated January 30, 2018, by Karie Trujillo, 4770 SW Chestnut Place
- 3.9** Letter dated February 4, 2018, by Michael Matschiner, 9275 SW Club Meadow Lane
- 3.10** Letter dated January 10, 2018, by Brandon and Holli Bridgens, 9240 SW Club Meadow Lane
- 3.11** Note – not dated, by Marie and Tony Kikes, 4800 SW Chestnut Place
- 3.12** Letter dated February 6, 2018, by Michael H. Miller, 5950 SW Spruce Ave
- 3.13** Letter date-stamped February 5, 2018, by Joseph Conrad, 9207 SW Club Meadow Lane
- 3.14** E-mail dated February 5, 2018 and letter dated February 3, 2018, by Robert T. Franklin, no address provided
- 3.15** E-mail and letter dated February 5, 2018, by Ron Earp of Laurelwood Animal Hospital, 9315 SW Beaverton-Hillsdale Hwy
- 3.16** Letter dated February 2, 2018, by Jim and Georgia Hogan, 9025 SW Club Meadow Lane
- 3.17** Letter dated February 20, 2018, by Brandon and Holli Bridgens, 9240 SW Club Meadow Lane
- 3.18** Letter dated January 28, 2018, by Sue Staehli, 4477 SW 94th Ave
- 3.19** Letter dated January 24, 2018, by Lynne Cartmill, 9360 SW Club Meadow Lane
- 3.20** E-mail dated January 27, 2018, by Nupur Pande, 9265 SW Meadow Lane
- 3.21** E-mail dated January 19, 2018, by Trisha McPherren, 9115 SW Club Meadow Lane
- 3.22** Letter dated February 6, 2018, by Pat Bukieda and undersigned, address not provided
- 3.23** Letter dated February 2, 2018, by Lynn F. Erdman at Laurelwood Animal Hospital, 9315 SW Beaverton-Hillsdale Hwy

A full discussion of issues raised in the written comments listed in this section that are responsive to the approval criteria for the Director's Interpretation is provided in Attachment

A. However, a number of comments received from the public address other issues not directly or even indirectly related to the approval criteria. The applicant's letter of March 6, 2018 (Exhibit 2.4) includes responses to a number of these issues. Additional discussion is provided in this section.

Several comments describe concerns about safety of persons and property, and a decrease in livability in the neighborhoods near the BCRC. Some comments describe observing people collecting beverage containers from private waste receptacles, or people pushing carts, or carrying bags with redeemable containers. Some comments describe a certain level of discomfort in seeing people in their neighborhood that don't appear to be residents. More seriously, some comments describe criminal activity that allegedly is occurring in the area because people who engage in activities such as drug use and theft come to the neighborhood to redeem containers at the BCRC.

While criminal activity and nuisance behaviors are not regulated by the Beaverton Development Code, and are not related to criteria for approval for the Director's Interpretation, it is important that city officials be informed about these concerns so that the issues can be understood and addressed appropriately. Accordingly, the Beaverton Police Department conducted an analysis of complaint calls in the area surrounding the BCRC, comparing a time period before the facility opened with a time period when it was in operation (Exhibit 1.3).

The analysis noted an increase in the number of complaints in the time the BCRC was operating compared to the prior time period, but did not conclude that there was sufficient evidence that this increase was caused by the presence of the facility.

One of the factors to bear in mind when considering a possible connection between the BCRC and an increase in complaints and concerns in the area is the location of grocery stores that accepted redeemable containers prior to BCRC opening. According to documentation showing the locations of participating grocery stores provided by OBRC (Exhibit 2.3), several stores that have discontinued redemption services since the BCRC opened are located along the Beaverton Hillsdale Highway corridor. These include New Seasons, Fred Meyer, and Walgreens to the East, and Target, Trader Joes, BiMart, Natural Grocers, and Fred Meyer to the West.

The safety and quality of life concerns some commenters express may or may not be directly related to the BCRC. Beaverton leadership recognize the community concerns and are committed to maintaining the city's high quality of life.

The Mayor's Office established a Community Services Program last year. As outlined in the city's 2018-19 budget document, the program's goal is to build and maintain relationships with nonprofit partners providing social service assistance to the Beaverton community and to centralize internal sources of support, ensuring accountability in program objectives supporting Beaverton residents in need.

Program staff work on:

- Severe Weather Shelter Coordination – Coordinate the expanded season for the Beaverton Severe Weather Shelter tracking outcomes of services provided, supporting recruitment and training of volunteers, ensuring communication between the city and nonprofit staff, and overseeing donations.
- Expanded homelessness support – Oversee and coordinate with partners on expanded services for families and individuals experiencing homelessness, including

a social worker at the Beaverton City Library, contract and host support for Family Promise of Beaverton, explore parking programs, and convening with other local agencies.

- Social Service Funding Grant Management – Managed the Social Service Funding Committee and the grant process distributing nearly \$200,000 in funds to non-profit agencies.
- Nonprofit Technical Support – Offering workshops and technical support to nonprofit organizations and staff looking to grow their knowledge, skills, and abilities to better serve Beaverton residents.
- Charity Drive/Beneficiaries Management – Work with city staff to coordinate the designation of nonprofit beneficiaries for events.
- Strategic Partnerships – Manage service provision for Mayor and City Council social service priorities such as the Tax Assistance Program. Established contract with Family Promise of Beaverton, which will fulfill the identified need of temporary housing for homeless families in Beaverton. Working with the Beaverton City Library to establish contracts with social service providers that can refer individuals in need to appropriate services.

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
DI2017-0003 OBRC-BCRC**

EXHIBIT 3

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications. The applicant responds to these criteria in the document prepared by Michael Robinson, dated December 21, 2017, titled Narrative in Support of the Request filed by Oregon Beverage Recycling Cooperative (OBRC).

These approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant has requested that the Director interpret the Beaverton Development Code in writing. Staff finds the Director's Interpretation (DI) application to be consistent with threshold number one.

Therefore, the Director finds that the proposal meets the criterion for approval.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The applicant has paid the fee associated with the Director's Interpretation Application.

Therefore, the Director finds that the proposal meets the criterion for approval.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.

The Applicant has identified several applicable Comprehensive Plan policies (Exhibit 2.1), and states that there are no conflicts with these policies. The Director has identified the following applicable Comprehensive Plan policies for discussion:

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses. Allow commercial uses at a range of scales, including large-format retail, to address community needs.

This policy specifies that the purpose of the Community Commercial Land Use designation, within which the BCRC is located, is to accommodate a wide variety of uses at a range of scales, including large-scale retail and convenient drop-off of redeemable beverage containers.

Goal 8.8.1: Reduce the amount of solid waste generated per capita.

a) The City shall support efforts to reduce the amount of solid waste generated from household, industrial, and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements.

The applicant states that the requested interpretation is consistent with this policy because the BCRC collects and removes beverage containers from the waste stream. The Director concurs and notes that the BCRC additionally has the explicit purpose of making bottle redemption and recycling pursuant to state law more accessible and convenient for city residents. Allowing recycling/redemption centers in areas that easily serve the population encourages redemption and recycling. Ultimately, the BCRC model may lead to an increase in the amount of beverage containers that are diverted from landfills. Recent data (<http://www.bottlebill.org/legislation/usa/oregon.htm>) shows that a greater proportion of redeemable beverage containers have been returned statewide since BCRC facilities have been operating; 64.3% in 2016, and 82% in 2017. This increase is at least partially attributable to an increase in the deposit/refund but may also be due to the increased convenience for BCRC patrons compared to the previous dispersed model.

Goal 9.1.1 Maximize efficient use of the city's employment land

d) Identify and protect the city's employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones.

The applicant states that adopting the requested interpretation will help protect and conserve industrial land for higher intensity industrial uses.

The Director concurs. Beaverton has limited industrially zoned land to provide jobs and space for growing businesses to expand. Commercial and service-related uses such as BCRC that are primarily characterized by patronage from the general public are ideally located in commercial areas.

Development Code

10.20 Interpretation and Application of Code Language.

The Director recognizes the extensive discussion of this section provided by the applicant (Exhibit 2.1).

The Director concurs that the Director's Interpretation application laid out in BDC Section 40.25 is the appropriate mechanism for requesting an interpretation of the BDC in this case.

10.50 Authorization for Similar Uses.

The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director's Interpretation, as provided by Section 40.25.

The Applicant has provided an extensive discussion of this provision (Exhibit 2.1).

The Director notes that the Director's Interpretation application laid out in BDC Section 40.25 identifies the criteria for approval of that application. The Director's discussion of the provisions of Section 10.50 are encompassed in the response to criterion 4 below.

20.10.10 Purpose

* * * *

2. Community Service (CS)

The CS District is intended to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Beaverton's major streets carry high traffic volumes and allow for larger scale, more intense commercial uses such as regional retail and fast food restaurants with drive-up windows, as well as smaller scale retail and service uses. Uses like the BCRC serve a similar customer and operate within the range of scales of other uses located along the city's major streets.

60.55 Purpose and Intent.

It is the purpose and intent of this chapter to establish design standards and performance requirements for all streets and other transportation facilities constructed or reconstructed within the City of Beaverton.

Some public comments received raise concerns about the potential for traffic impacts related to BCRC operations. The applicant retained an engineering firm to conduct an analysis of transportation impacts (Exhibit 2.2). This analysis concluded that the roadways operate and will continue to operate acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity. The City Traffic Engineer has reviewed the applicant's analysis and concurs that the impact on surrounding streets and intersections is insignificant.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. *When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.***

According to the applicant, the proposed use is a BCRC, which is not expressly identified in the BDC as a Permitted, Conditional or Prohibited Use. The applicant's response to Criterion No. 4 refers to the response provided to BDC Section 10.50, where the applicant explains that a BCRC is a permitted use because it is substantially similar to a "Service Business or Professional Services" use, and is not a "Recycling Center."

The Director also includes the following discussion, which addresses in detail the two findings required by this criterion and informed by the provisions of Section 10.50. First, that the BCRC is not already expressly identified in the Development Code, and second, that the BCRC is substantially similar to another use currently allowed in the CS zoning district.

As the applicant explains, the BCRC is an establishment operated for the purpose of receiving redeemable beverage containers from customers, providing applicable rebates for these containers, and consolidating these containers for transport to a larger facility for further processing. The BCRC is in fact a new type of recycling business in Oregon. In 2017 the Oregon Legislature enacted ORS 459A.735 to provide a convenient location for customers to redeem beverage containers, and allow retailers of beverages sold in redeemable containers to themselves opt out of redeeming those containers when a business like the BCRC operates within the parameters laid out in ORS 459A.

Public comments in response to this Director's Interpretation application and briefing to LUBA in a previous appeal of the city's approval of the BCRC's design review application assert that the BCRC is a "Recycling Center," which is an expressly identified conditional use in the Industrial (IND) zone. BDC 20.15.20. There, Recycling Centers are grouped with "Salvage Yards" and "Solid Waste Transfer Stations." Since "Recycling Center" is not a defined term in Chapter 90, the Director must determine if what opponents characterize as a "recycling center" in the CS zone is the same thing as the Recycling Center grouped together with Salvage Yards and Solid Waste Transfer Stations as a conditional use in the IND zone.

Of the three terms, only Salvage Yards has a definition in Chapter 90:

A place out-of-doors where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled, including vehicle wrecking yards, building wrecking yards, used lumber yards and places of storage of salvaged building; wrecking and structural steel materials and equipment, but not including rummage, yard or garage sales of no more than four (4) days duration. Three or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard.

The statement that "[t]hree or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard" serves a different purpose from the rest of the definition. It does not mean that salvage yards are typically characterized by three or more dismantled or inoperable vehicles. The focus of the sentence is on the dissonant impacts of even a small collection of dismantled or inoperable vehicles, which justify confining the collection to industrial zones.

BDC 10.20.6.B states that when a term is not defined in Chapter 90, it has the meaning set forth in Webster's Third New International Dictionary, 1993. The dictionary entry for 'recycle' is as follows:

to pass again through a cycle of changes or treatment <an industrial plant. . . cooling water through cooling towers as many as 50 times – J.R. Whitacker & E. A. Ackerman>; esp : to feed back continuously in a laboratory or industrial operation or process for further treatment

Generally speaking, uses are conditional when they have external impacts that exceed those of permitted uses in the zone. "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" are conditional uses in a zone where Storage Yard; Fuel Oil Distributors; Bulk Fuel Distributors; Heavy Equipment Sales; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; and Warehousing are among the permitted uses. This context indicates that the scale of what is meant by "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" in the IND zone is completely different from a BCRC use, which has almost no external impacts compared to the permitted uses in the zone and is on a much smaller scale. While BCRC's use is recycling, the term "recycling" in current usage is associated with a broad range of activities that are permitted in every zoning district today. The term "Recycling Center," as it is used in the BDC, does not include any and all recycling activities that occur in the city.

For example, many homes have areas for collecting and sorting recyclable materials under the kitchen sink, or in a pantry or garage. There are even consumer products marketed as "recycling centers" designed for home use (see Exhibit 1.5). Office buildings, restaurants, schools and parks all routinely collect, sort, and package recyclable materials. It would be absurd to suggest that these activities were intended to be confined to IND districts, and subject to a conditional use review.

While the BCRC is a commercial facility that operates at a larger scale than the widely distributed recycling activity described above, it is equally, if not more, distant on the recycling spectrum from large operations that receive recyclables, mostly transported by truck, primarily from commercial haulers. Patrons of the BCRC bring in bags of redeemable containers that have accumulated through ordinary household or commercial use over a period of time, perhaps a few weeks or a month (or maybe after a New Year's Eve party).

ORS 459A-735 explicitly establishes requirements for the number of containers per customer that must be accepted by facilities under the program. Bottle drop locations may set a maximum number of containers to be accepted per customer per day, but that maximum must be at least 350 for automated sorting, and 50 containers for hand-sorting, as well as drop off of at least 125 bagged containers. The BCRC meets statutory requirements by allowing daily container redemption up to 350 auto-sort and 50 manual sort.

Environmentally Conscious Recycling ("ECR") is a regional example of a large recycling facility in Multnomah County (Exhibit 1.4). It may be accessed by the general public for recyclable materials and construction debris drop-off, but much of the incoming materials

is from trucks operated by the business itself or other businesses with the primary function of solid waste disposal, or a need to dispose of large quantities of debris and recycling. The facility processes 90,000 tons of material per year, and is 9.2 acres in size, with a significant amount of the unenclosed lot area devoted to separating recyclable from non-recyclable material. Equipment on site includes:

a wood grinder, metal shear/baler, cardboard baler, plastic baler, rock crusher, box-spring recycling machine. ECR has four excavators and four front wheel loaders, four forklifts for handling incoming and outgoing materials.

ECR dwarfs the BCRC. The definition of Salvage Yard in BDC Chapter 90, above, matches in scale the operations of ECR, not the BCRC.

Since it is clear that the BDC term “Recycling Center” cannot be interpreted to include recycling activity of all sizes and shapes, a Director’s Interpretation is required to articulate the scope of the term. The Director’s Interpretation in this case must also determine whether the operations of the BCRC fall within the designated scope.

A number of factors and characteristics can be used to assess the scale and intensity of a use:

- The users or customers that the establishment serves; the general population, other businesses, industrial businesses, etc.;

The BCRC is explicitly intended to provide the general public with a convenient location to return redeemable bottles, rather than a location for medium or large-scale businesses to use.

- Noise, odors, and other potential impacts, whether the use is outdoors or enclosed;

The BCRC is fully enclosed, allowing potential noise and odors to be limited. In addition, the Beaverton City Code Chapter 5.15 and Section 5.05.050 establish limitations on noise and odors, respectively. Opponents complain that there are bottle and can crushing facilities on the subject property. While that is true, their concern is unfounded and does not support the argument that the BCRC is an industrial use. Similar crushing activities have been occurring for years and continue to occur at supermarket machines, and the number of bottles and cans crushed on site at the BCRC does not increase external impacts on neighboring properties compared with ongoing grocery store operations.

- The volume and type of traffic generated by the use; private passenger vehicles, small commercial trucks, large tractor trailer trucks;

As noted above, the BCRC serves the general public, and as such the majority of the traffic associated with the facility is private passenger vehicles; large trucks pick up sorted and compressed containers a few times a week. Based on the data presented in the traffic analysis (Exhibit 2.2, Figure 3), the facility is generating approximately 7.05 trips per 1000 gross square feet of building area (gsf) during the PM peak hour. For

context, here are the same PM peak hour trip generation numbers for other land uses (ITE Trip Generation Manual, 9th Edition) allowed in the Community Service Zoning District, trips per 1,000 gsf:

Free-standing discount store	4.98 trips
Quality restaurant	7.49
Discount supermarket	8.34
Pharmacy with drive-through	9.91
Daycare	12.34
Drive-in bank	24.30
Fast food with drive-through	32.65

All of these factors and characteristics indicate BCRC operations are distinct from both the BDC-defined Recycling Center and the regional examples of recycling centers and solid waste transfer stations that the BDC regulates as conditional uses in IND districts.

The Director notes a supplementary submission from the applicant (Exhibit 2.5), that indicates the zoning district locations of every BCRC in the State of Oregon. While this Director's Interpretation must interpret the BDC, where other jurisdictions determined a BCRC would be most appropriate provides additional context. Twenty-one out of 24 jurisdictions have approved locating a BCRC in a commercial or mixed-use zoning district.

Based on the submission of the applicant and the discussion above, the Director concludes that the term "Recycling Center," as it is used in the BDC, does not include BCRC operations.

The second question to evaluate is whether the BCRC is substantially similar to a use permitted in the Community Service (CS) zoning district. The Director does not believe the inclusion of the word "substantially" indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, "substantially" in this context means "more or less," where the focus is on the intensity of activity and the external impacts generated by the activity.

The CS district is one of four commercial zoning districts included in the BDC. It is a general purpose commercial district that allows a wide range of businesses and service uses, as well as residential use. It is mapped along regional corridors such as Beaverton Hillsdale Highway, Cedar Hills Boulevard, and other relatively dense, high traffic locations. As discussed in response to criterion 3, the purpose of the CS District, stated in BDC 20.10.10, is:

... to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Businesses like retail stores with no limitation on size; eating and drinking establishments, including fast food drive-up windows; and gas stations are all allowed. Service businesses such as health clinics, real estate offices, and health clubs are also allowed.

Many allowed uses in the CS district have characteristics similar to a BCRC. For example, a drive-up pharmacy restaurant can generate 9.91 trips per 1000 gsf in the pm peak hour, while the BCRC traffic study concludes that it will generate 7.05 trips per 1000 gsf. A number of permitted uses also draw users from a wide geographic area. Large shopping centers, for example, typically draw customers from a regional radius. These uses typically involve an in-person exchange of goods or services for money at an establishment open to the public.

Most importantly, the specific activity of beverage container redemption that takes place at the BCRC facility has been part of ordinary grocery store operations since the bottle bill was passed in 1971, and is permitted in the CS district. Even today, while the presence of the BCRC has allowed grocery stores in the area to opt out of container redemption, stores selling beverages in redeemable containers that are not located within the designated radius of a BCRC continue to be required by state law to redeem these containers for customers.

As stated above, the CS Zoning District allows a wide variety of uses, including "Service Businesses and Professional Services" as discussed in the applicant materials, "Eating and Drinking Establishments" and "Retail Trade." While staff recognizes that the BCRC is substantially similar to uses included in the two former categories, the specific activity of container redemption has long been associated with grocery store operation, which falls into the "Retail Trade" use category.

Since the specific activity (container redemption) is substantially similar, in type, scale and effect, to many other uses currently allowed in the CS district, the criteria for approval are satisfied.

Therefore, the Director finds that the proposal meets the criterion for approval.

5. *The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.*

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on January 10, 2018.

Therefore, the Director finds that the proposal meets the criterion for approval.

6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

The necessary documents related to the Director's Interpretation have been submitted. The earlier Design Review decision issued by the city in case file DR2017-003 for OBRC (building and site remodel) subject to review under separate criteria

identified in BDC Section 40.20.15.1.C. is affirmed with findings that support the use as permitted outright by the zone.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCUSION

Based on the facts and findings stated herein, the Community Development Director hereby makes this interpretation in support of the applicant's BCRC, finding it to be substantially similar to *Service Business / Professional Service*, a use permitted outright in the Community Service zone under Chapter 20, Section 20.10.20 of the Beaverton Development Code.

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Beaverton
OREGON

CITY OF BEAVERTON

Community Development
Department
Planning Division
12725 SW Millikan Way
PO Box 4755
Beaverton, OR. 97076
Tel: (503) 526-2420
Fax: (503) 526-2550
BeavertonOregon.gov

OFFICE USE ONLYFILE #: APP 2018-0001FILE NAME: Beverage Container Redemption CenterTYPE: APPRECEIVED BY: [Signature]FEE PAID: 250.00CHECK/CASH: 67519SUBMITTED: 5/11/18

NAC: _____

APPEAL OF A LAND USE DECISION

Revised 01/2016

PLEASE SELECT THE SPECIFIC TYPE OF APPEAL FROM THE FOLLOWING LIST:

☐ APPEAL OF A TYPE 1 DECISION☐ APPEAL OF A TYPE 3 DECISION☒ APPEAL OF A TYPE 2 DECISION☐ OTHER**APPELLANT NAME(S):**

See Attachment A

SIGNATURE(S): *(Original Signature(s) Required)*

EACH APPELLANT MUST HAVE PROVIDED EVIDENCE TO THE DECISION MAKING AUTHORITY THAT WAS CONTRARY TO THE DECISION.

APPELLANT REPRESENTATIVE: *All pre-hearing contact will be made solely to this person.*IF MORE THAN ONE APPELLANT, APPELLANTS MUST DESIGNATE A SINGLE APPELLANT REPRESENTATIVE.NAME: Michael G. NeffCOMPANY: Haglund Kelley LLPADDRESS: 200 SW Market St, Ste 1777CITY, STATE, ZIP Portland, OR 97201PHONE: 503-225-0777FAX: 503-225-1257SIGNATURE: _____ *(Original Signature Required)***REQUIRED INFORMATION**SITE ADDRESS: 9307 SW Beaverton Hillsdale Hwy CASE FILE NO. UNDER APPEAL: DI2017-0003

SPECIFIC APPROVAL CRITERIA / CONDITION BEING APPEALED: _____

BDC Section 40.25.15.1.C.3

SPECIFIC REASON(S) WHY A FINDING / CONDITION IS IN ERROR AS A MATTER OF FACT, LAW OR BOTH: _____

See Attachments B and C.

(Attach additional sheets if necessary)

SPECIFIC EVIDENCE RELIED ON TO ALLEGE ERROR: _____

See Attachment B and C.

(Attach additional sheets if necessary)

HOW DID THE APPELLANT(S) PROVIDE EVIDENCE TO THE DECISION-MAKING AUTHORITY? WHERE IN THE OFFICIAL RECORD IS SUCH EVIDENCE?: _____

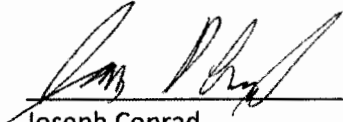
See Attachment B, C and D.

(Attach additional sheets if necessary)

Attachment A

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Signature Page for Appeal of DI2017-0003

A handwritten signature in black ink, appearing to read 'Joseph Conrad', is written over a horizontal line.

Joseph Conrad
9207 SW Club Meadow Lane
Portland, OR 97225

Signature Page for Appeal of DI2017-0003

A handwritten signature in black ink, appearing to read "Brandon Bridgens", is written over a horizontal line.

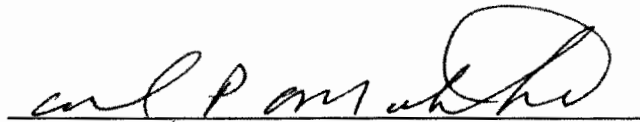
Brandon Bridgens
9240 SW Club Meadow Lane
Portland, OR 97225

Signature Page for Appeal of DI2017-0003

A handwritten signature in black ink, reading "Holli Bridgens". The signature is written in a cursive, flowing style. The first name "Holli" is written with a large, looped 'H' and the last name "Bridgens" follows in a similar cursive script. The signature is positioned above a horizontal line.

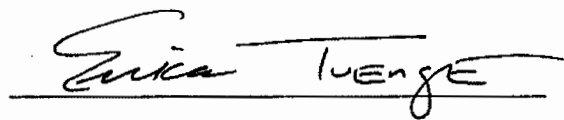
Holli Bridgens
9240 SW Club Meadow Lane
Portland, OR 97225

Signature Page for Appeal of DI2017-0003

A handwritten signature in black ink, appearing to read "Michael Matschiner", written over a horizontal line.

Michael Matschiner
9275 SW Club Meadow Lane
Portland, OR 97225

Signature Page for Appeal of DI2017-0003

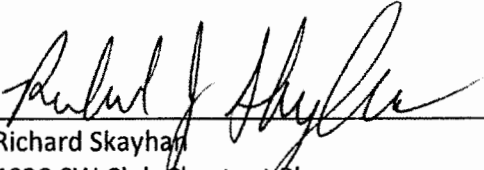
A handwritten signature in black ink, reading "Erika Tuenge", written over a horizontal line.

Erika Tuenge

Communications Director

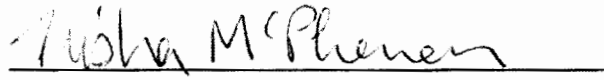
Jesuit High School | 9000 SW Beaverton-Hillsdale Hwy | Portland, OR 97225

Signature Page for Appeal of DI2017-0003



Richard Skayhan
4820 SW Club Chestnut Place
Beaverton, OR 97005

Signature Page for Appeal of DI2017-0003

A handwritten signature in black ink, reading "Trisha McPherren", is written over a horizontal line.

Trisha McPherren

9115 SW Club Meadow Lane

Portland, OR 97225

Attachment B

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BACKGROUND, PARTIES AND SUMMARY OF APPEAL ARGUMENTS

(DI-2017-0003)

I. BACKGROUND

This appeal is brought by numerous neighbors who oppose the siting of the Oregon Beverage Recycling Cooperative's BottleDrop on Beaverton-Hillsdale Highway. The facility is housed in the building which for many years was Pier One Imports. The BottleDrop, a center for recycling and redemption of beverage containers, opened in May 2017 and has operated since without proper land use approval. Beaverton's planning staff very recently issued a long overdue Director's Interpretation which appellants ask City Council to overturn.

II. THE PARTIES

A. OBRC – Project Proponent

The most influential members of Oregon Beverage Recycling Cooperative ("OBRC") are the beer, soft drink, and other consumer beverage distributors. Columbia Distributing is by far the largest of the distributors, and itself is owned by a California-based group of investment bankers. Because the OBRC is a private entity, it is not required to publicly disclose its financial information or the identities of its members.

The OBRC is a state-sanctioned monopoly to which the Oregon Legislature delegated authority to administer a recycling program for redeemable beverage containers. The discretion delegated by the Legislature to the OBRC is broad and includes control of all the deposit money paid by consumers when purchasing beverages.¹ The BottleDrop facility on Beaverton-Hillsdale Highway is based on a design favored by the OBRC. This design allows for grocery stores in a tributary "convenience" area to remove reverse vending machines and requires consumers and businesses to return redeemable beverage containers to a center (the "BottleDrop") located at the centerpoint of the convenience area. Other designs which do not require return of containers to one of these centers are integrated with grocery stores. Examples can be found at the Burlingame Fred Meyer and at Safeway stores in Portland at SW 10th and Jefferson and in the Pearl.

B. City of Beaverton

OBRC worked with former Beaverton senior planner Scott Whyte on the issue of what city process was required for the BottleDrop. Siting of the project occurred without written notice being given to any of the immediate neighbors. After the Oregon Land Use Board of Appeals reversed and remanded the siting issue to the City, Planning Director Twete issued the Director's Interpretation which is the action now under appeal.

¹ See <http://www.wweek.com/news/state/2017/02/01/corporate-lobbyists-turned-oregons-iconic-bottle-bill-into-a-sweet-payday-for-their-clients/>.

C. The Neighbor Appellants

Appellants all are neighbors. Brendan and Holli Bridgens are homeowners who live with their two daughters on the property east of and adjacent to the BottleDrop. The Bridgens share a common fence with the BottleDrop, and their side and backyards front the BottleDrop parking lot. Michael Matschiner owns and lives in a home directly north and across SW Club Meadow Road from the BottleDrop. Joseph Conrad owns and resides in the home which abuts and is immediately east of Mr. Matschiner's property. Trisha McPharren owns and lives with her daughter in a home at 9115 SW Club Meadow Road, which is the second lot due east of the Matschiner property. Jesuit High School sits east of and 175 feet across Beaverton Hillsdale Highway from the BottleDrop. Jesuit High School also owns nearly all of the Valley Plaza property, which is located directly across from the BottleDrop (across Beaverton Hillsdale Highway). Richard Skayhan owns a home at 4820 SW Chestnut Place and resides there with his spouse, Susan Skayhan.

III. ISSUES ON APPEAL

A. This Type of BottleDrop is a Recycling Center under the Plain Language of the Beaverton Development Code

Staff's position is that all BottleDrops are commercial uses which functionally do not differ from various type of commercial uses allowed under the Beaverton Development Code ("BDC"). If staff is correct, the type of BottleDrop at issue may be sited at any location in any of Beaverton's commercial zones without condition and without written notice to anyone.

Appellants believe that the type of BottleDrop sited on Beaverton-Hillsdale Highway is a Recycling Center, a use not an allowed in Beaverton's commercial zones. If appellants are correct, the type of BottleDrop OBRC has sited in Beaverton must be sited in the Industrial zone if at all.

Appellants' argument is based on the BDC's plain language, and appellants believe the approach staff used to approve this project ignores the plain language of multiple sections of the BDC. In fact, the analysis provided by the Director in approving this project speaks volumes about the strong foundation upon which appellants rest their argument. The Director utilizes many different approaches to her analysis in an effort to show the BDC's meaning is something other than its plain language. The result is an analysis which among other things discusses: under-the-kitchen sink recycling; the definition of Salvage Yards; scale and intensity; Environmentally Conscious Recycling; ORS 459A-735; peak hour trip generation; and BottleDrops in other jurisdictions. The Director discusses all of this while losing focus on plain meaning of the language of the BDC. The term "Recycling Centers" and the other relevant code language before Council are not highly technical terms of art and staff's discussion

Appellants believe Oregon law and fundamental fairness require a plain language reading of the BDC. Residential homeowners, business owners, educators, students, and other citizens

should be able to read and understand the BDC without fear that the meaning of plain language will be ignored by public officials. Otherwise, there is little point in using a public process to adopt the BDC and little point in making it available to the public at all.

B. Staff Improperly Used BDC “Procedure” to Reach Conclusions Approving the BottleDrop

The procedure used by staff to conclude in favor of the project utilized an analytically questionable two-step process which should be rejected by City Council. First, staff determined the term “Recycling Center” did not include facilities like the BottleDrop. After reaching this conclusion, staff then determined the BottleDrop is “substantially similar” to a number of types of uses allowed in the Commercial Service zone, including “Eating and Drinking establishments”, “Retail Trade,” and “Service Businesses” like health clinics, real estate offices, and health clubs.

This procedural approach to analysis used by staff is flawed because the BDC requires in this case that staff evaluate whether the BottleDrop is most substantially similar to the use Recycling Center or to any single one of the uses or types of uses identified in the Commercial Service zone. Proper analysis does not allow for the use Recycling Center to be compared against a collection of uses allowed in Commercial Service zone. City Council should rejected the results of this flawed analytical approach.

Council also should be aware that the BDC expressly states that the Director’s Interpretation procedure is to be used “(i)n advance of, or concurrent with” submittal of development applications. The director’s interpretation of procedure used here, is of course, after the fact instead of in advance of or concurrent with the initial project application.

C. Staff’s Rejection of the BDC’s Plain Language is a DeFacto Code Amendment and Should Be Rejected

Staff rejecting the BDC’s plain language and approving the BottleDrop is the type of policy decision that fundamental fairness and the BDC itself requires be addressed by legislative amendment. If the City of Beaverton’s elected and non-elected officials believe all commercial zoned areas in Beaverton should be available for use as a BottleDrop or other types of recycling centers, the proper approach to adopting this policy is by legislative amendment. This would provide affected and other interested persons the opportunity to provide comment as part of a deliberative process as to whether this change in policy is appropriate. As appellants already have articulated, written notice prior to the siting of the BottleDrop was provided neither by the city nor by the BottleDrop applicant.

IV. CONCLUSION

Appellants respectfully request City Council reject the decision made by staff, conclude that the BottleDrop on Beaverton-Hillsdale Highway is a Recycling Center as that term is understood in the BDC, and adopt findings which support this conclusion. The BottleDrop is not a compatible use when sited next to commercial service businesses and residence because of the odor, noise, and safety issues created by this use and which impact nearby people and property.

Attachment C

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Attachment C

The Director of Community Development has committed multiple errors in her Notice of Decision and her supporting Analysis and Findings for DI2017-0003. Appellants respectfully request the Beaverton City Council reject several of the Director's conclusions for the reasons set out below. The specific approval criteria being appealed is 40.25.15.1.C.3.

REQUIRED INFORMATION

Approval Criteria Being Appealed

Section 40.25.15.1.C.3 – Appellants believe the Director's interpretation is inconsistent with the City's Comprehensive Plan and the BDC.

Relevant Code Provisions and Specific Reasons Why the Director's Finding is in Error

1. The Language of the BDC Does Not Contemplate the City's Use of the Director's Interpretation Procedure in the Fashion Proposed by the Applicant and Staff (BDC Section 40.25.05) – this section of the Beaverton Development Code (BDC) states that the Director's Interpretation procedure is for the resolution of interpretation issues "In advance of, or concurrent with, applying for approval of an application, development permit, or other action." This language makes clear that the Director's Interpretation procedure is not intended to be used by the City to justify an interpretation where the applicant should have but did not request a Director's Interpretation prior to or concurrent with application for design review.
2. The BottleDrop is a Recycling Center as that Term is Used in the BDC (BDC Sections 10.20.3, 10.20.6 and 20.15.20) – the BottleDrop, a facility specifically designed and operated for the sole purpose of the recycling and redemption of beverage containers, falls within the definition of "Recycling Centers" in BDC Section 20.15.20. Staff's conclusion that the BottleDrop should be considered something other than a Recycling Center defies common sense given that the BottleDrop is located at the centerpoint of a defined recycling service area and annually will receive and process in excess of 30 million beverage containers. In ignoring the plain language, the Director fails to consider that recycling by its nature contemplates and requires direct public patronage. Rather than focusing on the plain language and appropriate context of the term "Recycling Centers," the Director developed arguments that attempted to demonstrate the BottleDrop was not industrial in nature and therefore could not be a type of Recycling Center which the BDC contemplates. This discussion contains multiple errors and incorrect assumptions, and City Council should not allow this argument to distract attention from the BDC's requirements: (a) that the BDC should be read literally; (b) that dictionary definitions shall be applied to undefined terms; and (c) that the BDC shall be interpreted reasonably. A number of these errors and incorrect assumptions are set out and discussed in the remainder of this section.

a) Scale and Intensity Cannot Be Proxies for Plain Language

The Director cannot be allowed to suggest that a business which daily recycles 80,000 beverage containers is too small in scale and intensity to be a Recycling Center under 20.15.20.

b) A Plain Language Reading of “Recycling Centers” Does Not Mean “Large Recycling Facilities Like Environmentally Conscious Recycling in Multnomah County”

The Director sets out a spectrum of possible activities that she suggests might meet the definition of “Recycling Centers,” putting under-the-kitchen sink recycling on one end and Environmentally Conscious Recycling on the other. This distracts from the fact that a reasonable interpretation, using commonly employed definitions of “recycling” and “center” and industry’s generally understood definition of “recycling centers,” must find that a centrally-located facility for recycling and redemption of 80,000 beverage containers a day is a “Recycling Center” under the BDC. To argue against something so evident, requires one to offer arguments that ignore the actual language of the BDC read in context.

c) The term “Recycling Centers” is Not Limited to Outdoor Operations

Nothing in the BDC suggests the term “Recycling Centers” includes only outdoor operations.

d) The Definition of “Salvage Yard” is Not Relevant to a Plain Language Interpretation of “Recycling Centers”

The Director errs in placing importance on the BDC’s definition of “Salvage Yard” and then comparing this definition to Environmentally Conscious Recycling to suggest the BottleDrop cannot be considered a “Recycling Center.” The Director instead should approach her interpretation and construction as the BDC directs, by focusing on the commonly-understood meanings of words and terms. The Director should not read into the BDC words and concepts that are not found in the meaning or context of the language itself.

3. Given the Plain Language of the BDC, Staff Cannot Find the BottleDrop Is Substantially Similar to a Use Specifically Allowed in the Commercial Zoning District (BDC Sections 10.50 and 40.25.15.1.C.4) – the BDC does not allow the Director to use the Director’s Interpretation procedure to validate the BottleDrop as a “Service Business” use, a use the BDC specifically allows in Commercial zones. There are two separate and independent bases which support this conclusion, each of which by itself should be recognized as preventing staff from applying the BDC to validate the siting of the BottleDrop in a Commercial zone.

- a) BDC 10.50 – the language here clearly provides that if the BDC expressly provides a use is allowed in one zoning district (e.g. Industrial), then the Director’s Interpretation procedure may not be used to approve siting of this use in another zone where the use is not specifically allowed (i.e. Commercial). The use in question – a Recycling Center – is specifically allowed in the Industrial zones, and staff is illegally using the Director’s Interpretation procedure to allow siting of a Recycling Center in a Commercial zone where the use is not specifically allowed.
- b) BDC 40.25.15.1.C.4 – this language makes clear that when staff uses the Director’s Interpretation to determine if a use is allowed in a given zone, the use being validated must be “substantially similar” to a use “currently identified” in the subject zoning district. Staff violates this provision by determining the BottleDrop is substantially similar to a “Service Business” use without identifying an actual operating Service Business in the Commercial Service zone which is “substantially similar” to the BottleDrop. The language of BDC 40.25.15.1.C.4 requires the Director identify a specific existing business in the Commercial Service zone, which given all relevant considerations, is a reasonably-tailored analogue to the BottleDrop. Staff has not done this here because no existing reasonably-tailored analogue can be identified in the Commercial Service zones of Beaverton given the characteristics of the BottleDrop. Reference to ancillary uses at retail grocery stores is an apples-to-oranges comparison which is not apt given the language of BDC 40.25.15.1.C.4. This reference likewise is not persuasive given the great difference in scale and intensity of the BottleDrop’s container collection and processing when compared against reverse vending machines operated at grocery stores.
- c) BDC 10.50 and BDC 40.25.15.1.C.4 -- staff’s analysis fails to consider that BDC 10.50 and BDC 40.25.15.1.C.4 must be construed and applied together. BDC 10.50 is clear that staff may not use the Director’s Interpretation procedure “to permit a use already allowed in any other zoning district of this Code.” BDC 40.25.15.1.C.4 provides that a use not identified in the BDC may be permitted by the Director if it is “substantially similar” to another use identified in the subject zoning district. While appellants do not concede their plain language argument that the BottleDrop is a Recycling Center, even if one concedes the term “Recycling Centers” is ambiguous, staff has not properly construed and applied BDC 10.50 and BDC 40.25.15.1.C.4 to give both meaning. If staff believes “Recycling Centers” is an ambiguous term, then staff must construe and apply the “substantially similar” test of BDC 40.25.15.1.C.4 and the “already allowed” prohibition of BDC 10.50 so that both have meaning. Read together, proper construction of these two code sections require the Director to compare the characteristics of this BottleDrop against the specifically named Industrial use

“Recycling Centers” and the staff’s preferred “substantially similar” commercial use, “Service Business.” Through this comparison, staff must determine if the BottleDrop is substantially similar to both of these uses. If staff determines it is substantially similar to both of these uses, it must analyze the BottleDrop against each of these uses and then determine which of these uses the BottleDrop is most substantially similar to. What staff cannot do is first determine that the BottleDrop is not a “Recycling Center,” and then determine the BottleDrop is “substantially similar” to multiple uses in the Commercial Service Zone.

4. In Construing and Interpreting the BDC, Staff and the Applicant are Subverting The BDC’s Meaning and Engaging in a DeFacto Legislative Amendment Which Defeats the Purpose of Zoning (BDC Sections 10.20.3, 10.20.4, 10.20.5)

BDC 10.20.3 requires the BDC “shall be read literally.” BDC 10.20.4 provides “(p)roposals for uses where . . . the rules of the Code do not provide a basis for concluding that the use is allowed are prohibited.” BDC 10.20.5 provides “(u)ses of land not expressly allowed . . . are Prohibited.”

The point of these provisions is to make clear that: (1) the BDC is a zoning code which prohibits some uses in some zones because these uses are not compatible with other uses allowed in the zone; and (2) city staff in applying the BDC are required to take a plain language approach to applying the BDC even when it would be convenient to ignore the BDC’s express language. These provisions emphasize that the BDC is designed to make sure that citizens – those living, working, and learning in Beaverton and Washington County – have a right to rely upon the plain language of the BDC in making choices about where they chose to reside, work, learn, and establish businesses.

If staff and the applicant believe that as a matter of policy, given the 2011 legislative amendments to the Bottle Bill (or for some other reason), that BottleDrops should be allowed in Beaverton’s commercial zones, the proper approach is to remove the BottleDrop and to initiate a legislative amendment to the BDC through BDC 50.50. Using the proper approach to adopting new policies would advance the important purposes of the BDC set out in Section 10.10.4.F – “to enable interested and affected persons to provide input in the development process.” To date, this purpose generally has been ignored for this project. The proof of this fact is that the BottleDrop was sited without the opportunity for interested and affected persons to provide any input into its siting, and it now has operated for more than a year without legal land use approval.

Conflicts Between Comprehensive Plan Policies and the Director’s Interpretation

Goal 3.2.1 Provide for thoughtful and strategic infill and redevelopment

Policies:

- a) Provide a set of residential infill guidelines and standards that encourage compatible infill development, consistent with the following principles:

- iii. Manage transitions between different uses and housing types.

Appellants' Response:

The Director's Interpretation will allow a use which has been operating for a one-year period and during this time demonstrated that it is incompatible with each of its immediate neighbors. Despite an intensity of use which involves the receipt and processing of approximately 80,000 beverage containers daily, the use operates on a property which abuts commercial businesses to its east and west, residences to its north, and a high school 175 feet to its southeast. The processing of 80,000 beverage containers a day is incompatible with the uses being made by each of these neighbors. The parcel on which the use is located is too small to provide for buffers that would allow for the transitions contemplated by this policy of Goal 3.2.1. The site needs to be significantly larger, the property would need to be centered to allow for adequate buffers on all sides, and additional improvements would be required to effect this policy in a meaningful way.

Goal 3.4 Planning and Development Review

Policies:

- b) Ensure that land use planning, notification, and public involvement procedures and processes are inclusive and provide meaningful opportunities for engagement by all community members.

Appellants' Response:

Despite intensity of use which generates significant noise and odor problems for the immediate neighbors of the subject property, no meaningful public process by Beaverton was made available before the new use on this property was established last May. Many neighbors further removed from the property are not directly impacted by noise and odor from the facility, but have experienced substantial and persistent safety issues associated with the intensity of the operation. The Director's Interpretation process is the first meaningful opportunity for the public to participate in a discussion about whether the use is legal and appropriate at the current location. Beaverton's approval of the use has resulted in illegal operations at the site being conducted since last May. The Appellants are hopeful that City Council will not allow the fact that the use already is established to color how Council members view this appeal. The applicants took a calculated risk in continuing forward with development in the face of a reasoned appeal. The project proponents should have used a more inclusive approach that included an opportunity for meaningful public discussion about the preferred location for the project. City Council should not reward the OBRC for pushing the project forward without notice to the public in the face of an appeal.

Goal 3.7.1 Enhanced Commercial Centers and Corridors

Policies:

- a) Over time, new development and redevelopment should improve accessibility and comfort for non-auto modes . . .

Appellants' Response:

Applicant's use will increase the number and length of vehicle trips in and around Beaverton as reverse vending machines have been eliminated from many grocery stores in the area and because the facility will be the only one of its type in an area the size of an approximately three-mile radius circle.

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses

Policies:

- d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking.

Despite this policy in the Comprehensive Plan, the Director has not utilized development standards to address the noise, odor, and other issues which have made this use incompatible with the uses of residential neighbors to the north, commercial neighbors to the east and west, and the high school to the southeast. By declaring the use to be commercial, the Director also eliminates the ability to use conditional use review to address these issues.

Goal 8.8.1 Reduce the amount of solid waste generated per capita

Policies:

- a) The City shall support efforts to reduce the amount of solid waste generated from household, industrial, and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements

Appellants' Response:

There is no evidence that operation of the BottleDrop reduces the amount of solid waste generated from household and commercial uses. Contrary to the comments of the Director, removing the reverse vending machines from individual grocery stores and forcing redemption for 24 grocery stores into a single location makes recycling and redemption of containers more difficult because: 1) consumers with access to an automobile must now take a separate trip to

recycle redeemable containers instead of combining this recycling with a trip to purchase groceries; 2) consumers without access to an automobile will find it significantly less convenient to recycle their redeemable containers because many will travel further and more frequently to use the BottleDrop. In addition, given that there is a significant amount of available Industrial zone land easily accessible to the public near the location of the BottleDrop, the applicants can seek to site the facility in this area where Recycling Centers are allowed as a conditional use.

Goal 9.1.1 Maximize efficient use of the city's employment land

Policies:

- d) Identify and protect the city's employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones

Appellants' Response:

Appellants disagree with staff and the applicant. The policy of conserving existing Industrial land for higher intensity industrial uses is implemented through BDC 20.15.20, where the City Council identified a limited group of uses appropriate for siting in Industrial zones. Included in this list of uses are "Recycling Centers." Recycling Centers by their nature depend upon the general public to travel to the site, and the City Council recognized this at the time it provided that Recycling Centers can be sited in Industrial but not Commercial zones. Making this policy choice will have only a minimal impact on the amount of industrially-zone land available for development because this type of recycling center requires less than 2 acres of land and because few of them will ever be sited in Beaverton.

Evidence Relied on to Support Alleged Errors and Method of Providing to Decision-Making Authority

Appellants have reviewed the Director's Interpretation Decision and the Exhibits referenced by the Director in her decision, and has identified the following as evidence relied upon to allege error:

Director's Interpretation Decision

Attachment A

Exhibit 1.1

Exhibit 1.3

Exhibit 2.1

Exhibit 2.4

Exhibit 3

These exhibits are incorporated by reference to this Notice of Appeal

In addition, appellants anticipate providing additional evidence to support the alleged errors prior to hearing of the appeal before City Council, during the hearing, and as supplements to the record following the hearing. Such evidence may be submitted through written submissions, oral testimony at hearing, or through the use of visual media at hearing.

Attachment D

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City of Beaverton

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Exhibit 3.5

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February 7, 2018

VIA EMAIL AND US MAIL

Ms. Anna Slatinsky
City of Beaverton
Community Development Department
Planning Division
12725 SW Millikan Way
P.O. Box 4755
Beaverton, OR 97076

RE: Notice of Pending Director's Interpretation

Project Name: Oregon Beverage Recycling Cooperative Beverage Container Redemption Center

Case File: No. DI2017-0003

Dear Ms. Slatinsky:

I represent Jesuit High School and a number of residents of the Royal Woodlands neighborhood. The comments set out below are in response to the Notice of Pending Director's Interpretation for the Oregon Beverage Recycling Cooperative Beverage Container Redemption Center (Case File No. DI2017-0003).

Summary of Comments

1. The primary concerns of Jesuit High School and nearby residents are public safety and livability. A significant negative impact on both public safety and livability for those living, learning, educating, and doing business near the ORBC center has been evident since the opening of the Oregon Beverage Recycling Cooperative ("OBRC") center on Beaverton-Hillsdale Highway.
2. Efforts by Jesuit High School to engage OBRC in a meaningful discussion about relocating the center have been rebuffed by OBRC corporate officers.
3. That the location and operation of the OBRC center has adversely impacted public safety and livability significantly is the result of concentrating the beverage container recycling and redemption process for 24 large retail grocers at a single facility. What once was

diffuse, is now centralized at one Beaverton location. OBRC failed to identify the possibility of such a significant, adverse impact before city staff approved OBRC's development application. That OBRC's representatives were not as forthcoming as they should have been is disappointing given that OBRC's beverage container recycling program is administered with what is essentially public money.

4. The City of Beaverton's Development Code ("BDC") provides that recycling centers are an allowed conditional use in the areas zoned Industrial. It is undisputed that the OBRC facility is a center where the primary use is the collection and processing of recycled materials. Because the BDC expressly allows siting of recycling centers in Industrial zoned areas, a Director's Interpretation cannot legally be used to permit a facility like the OBRC recycling center in a Community Service zone. OBRC's arguments for why its center is something other than a recycling center are unconvincing and not reflective of the daily cycle of mass collection, sorting, crushing, and transport of approximately 8,000 recyclable containers at the site.
5. While the conclusion that the OBRC facility is a recycling center follows common sense, this conclusion also tracks Washington County's Community Development Code definition of "recycling center." Ensuring the two definitions are consistent is important given the numerous locations where the two jurisdictions are adjacent and the long history of administrative cooperation and coordination between Beaverton and Washington County.
6. None of my clients are suggesting the OBRC should not have the opportunity to site a recycling center in Beaverton. The BDC provides such facilities may be sited in Industrial zones using the conditional use process provided in the BDC. This straight-forward and plain language reading of the BDC is supported by the stated purpose of the BDC conditional use process – to ensure minimal impact on livability and reasonable compatibility on the areas surrounding the use. Given the significant impacts the OBRC's center has had on the surrounding area, it clearly is the type of use where application of the conditional use process is of benefit to those working, studying, educating, and living in the surrounding area.
7. A Director's Interpretation clearly is the wrong approach to permitting the OBRC center given the BDC's plain language, the type of mass recycling and processing occurring on site, the adverse impact the OBRC center has had on the surrounding community, and the potential for other OBRC centers to negatively impact other schools, residents, and businesses in Beaverton and nearby Washington County.

Introduction

For more than 40 years, the great majority of beer and soft drinks container recycling in Oregon has been through the retailers which sell these products. Consumers paid a bottle or can deposit



when they purchased these beverages, and were legally entitled to a deposit refund from beverage retailers such as grocery and convenience stores. Container recycling by retailers was (and for many retailers continues to be) a use ancillary or accessory to the primary use of operating a retail store.

Retailers resented this legally-imposed participation in the recycling chain, and in 2011, when Oregon lawmakers expanded the types of beverages requiring container deposits, Oregon lawmakers also provided a regulatory pathway through which retailers could relieve themselves of required participation in the recycling program. Oregon's 2011 expansion of the Bottle Bill provided for the creation of a state-sanctioned monopoly that allows retailers to refuse direct return of beverage containers if a center for the recycling of beverage containers and deposit redemption is located close enough to their store. The result has been the establishment since 2011 of approximately 24 such centers in various locations around the state. At each of these centers the recycling of beverage containers is the primary use. What previously was an ancillary/accessory use associated with 24 retail grocery stores scattered over a large geographic area is now a primary industrial use that involves recycling centers where beverage containers are collected, sorted, crushed, and then shipped off-site for further processing.

A Plain Language Application of the BDC Respects the Community's Work to Adopt the Code and Corrects an Initial Mistake that has Adversely Impacted Beaverton Residents

A. The OBRC Center on Beaverton-Hillsdale Highway Has Negatively and Significantly Impacted Nearby Residents, Students, Educators, and Businesses

Jesuit High School and many nearby homeowners and businesses have experienced an acute and significant decrease in safety and livability since the opening of the OBRC in May 2017.

On any given school day the Jesuit High School campus community numbers approximately 1,250 students ages 14-18 and 130 teachers and administrators. A large percentage of the students are involved in early morning or after-school co-curricular activities. As is typical of secondary education, not all of these co-curricular activities involve constant supervision by teachers and/or administrators. Weekends also frequently see students and faculty members involved in on-campus activities.

Measured corner to corner across Beaverton-Hillsdale Highway, the OBRC center literally is a stone's throw (approximately 175 feet) from the Jesuit High School campus. According to data available from the Oregon Health Authority, no OBRC facility is closer to a primary or secondary school than the OBRC Beaverton facility is to Jesuit High School. This same data, which is maintained by the Oregon Health Authority for the purpose of making sure marijuana facilities are not sited too close to schools, also demonstrates the next closest OBRC facility to a primary or secondary school is found in Hermiston. The data shows the Hermiston OBRC site provides an additional 400 feet of school buffer compared to OBRC's Beaverton site.

Changes in public safety and livability documented by Jesuit High School public safety staff include but are not limited to: (1) more frequent trespassing on campus by individuals who



cannot articulate a purpose for their visit; (2) increased theft of school and student property; and (3) increased trash and debris on campus. Jesuit security personnel also have observed persons consuming what are believed to be controlled substances while parked on Jesuit High School property, and then observed persons using this same vehicle frequenting the OBRC center. These changes are unwelcome and show no sign of abating.

While Jesuit High School has not yet documented a school-related, serious, person-on-person crime believed to be directly associated with proximity to the OBRC site, administrators believe that given the increase in illegal activity on and near campus since May 2017, students and teachers are now more likely to become victims of crime while on or near campus than they were pre-May 2017.

Royal Woodlands is a neighborhood located south of SW Beaverton Hillsdale Highway and west of SW Jamison Road. The houses of the Royal Woodlands residents are not as close to the OBRC site as the Jesuit High School campus, but Royal Woodlands residents also have documented a significant adverse impact to public safety and livability since May 2017. McMillan Park is a 3 to 4 acre neighborhood park in Royal Woodlands that includes wooded trails and play equipment for young children. During the last nine months, Royal Woodlands residents have documented discarded hypodermic needles, alcohol consumption, and panhandling in McMillan Park. These same residents report that this illegal activity previously was not present or so infrequent that it was difficult to detect. Royal Woodlands residents also report that car break-ins and theft of non-secure property have increased noticeably since May 2017.

Business owners documenting illegal activity and public safety concerns include the owners of the Laurelwood Animal Hospital, the Oregon Veterinary Specialty Hospital, and China Delight, all of which are either adjacent to or on property removed from the OBRC site.

If no one with Beaverton Community Development has canvassed the area surrounding the OBRC center to interview residents, educators, and businesspeople since May 2017, I strongly encourage you to do so. The decrease in public safety and livability since May 2017 documented by those living, working, teaching and studying is significant and is real.

B. OBRC Was Best Positioned to Understand the Negative Impact on Nearby Residents, Students, Educators, and Businesses, and Failed (and Continues to Refuse) to Inform Staff and the Public About This Issue

OBRC made no meaningful effort to engage the community in the area surrounding its facility to discuss proposed location or possible negative impacts to the neighborhood before Beaverton approved its design permits. Despite recent requests from Jesuit High School and other landowners near the OBRC center, OBRC corporate officers continue to refuse engagement in any public discussion about the location of their project.

Given their experience with operating other OBRC centers, OBRC must have understood their project would negatively impact public safety in the neighborhood surrounding their facility.



OBRC corporate officers also must have understood that the community would object to their project if what OBRC management already knew was understood more widely.

C. OBRC's Request For a Staff-Created Exception Ignores the Plain Language of the Beaverton Development Code

The BDC specifically authorizes the siting of recycling centers in the areas zoned Industrial on the City of Beaverton Zoning Map. BDC 20.15.20. Recycling centers are not an authorized use in Commercial zones, which include the zoning of the former Pier One building where OBRC's facility is located. Given the purpose of OBRC's operations at the site, and the use being made by OBRC day-to-day, the facility is a center for recycling (i.e. a "recycling center"), and therefore must be sited in an Industrial zone if at all. This should be the end of the inquiry for staff given the plain language of the BDC.

1. BDC 10.50 (Authorization for Similar Uses)

BCD 10.50 expressly prohibits Director Twete from authorizing a use in Commercial zoned areas that already is authorized in the Industrial zoned areas ("the Director may not permit a use already allowed in any other zoning district of this Code."). Because the OBRC center meets the plain language definition of "recycling center," Director Twete may not authorize the OBRC center in a Commercial zoned area through a Director's Interpretation.

2. Policies Articulated in the Beaverton Comprehensive Plan Support Application of the Plain Meaning Definition

Policy (b) of Goal 3.9.3 in the Beaverton Comprehensive Plan states that the City of Beaverton's industrial zoning is to "provide suitable locations for industrial and manufacturing uses that are not compatible with sensitive uses (e.g. schools, daycares, homes) . . ." The intensity of the OBRC's collection and processing of recycling at its center results in an industrial use that simply is not compatible with nearby homes, schools, and commercial businesses. Through Goal 3.9.3, the Beaverton Comprehensive Plan supports the concept that the use is a recycling center that should be sited in an Industrial zone.

3. A Plain Language Reading is Further Supported by Beaverton and Oregon's Experience

As a practical matter, consumer recycling in Beaverton for many years has been achieved through three primary collections systems: (1) curbside recycling; (2) beverage container recycling at retail stores; and (3) recycling a variety of materials at the Far West Recycling where Highway 217 and Denny Road meet. Both curbside recycling and beverage container recycling have utilized a "dispersed" recycling model (one by residence and the other by retail store). Other recycling, however, has involved the need for the consumer to travel to a recycling center, which typically would be Far West off of Denny Road.

Now that state law allows for a different model for the recycling of beverage containers, consumers are given the choice of recycling beverage containers curbside or traveling to a



location dedicated solely to the recycling of redeemable containers. This new dedicated location utilizes the recycling center model instead of the dispersed model. The consumer must travel to a location where the only land use is the collection and processing of recyclable materials, in this case redeemable aluminum, glass, and plastic beverage containers. The dominant feature of the use is the collection, sorting, and crushing of these consumer packaging materials, not the fact that consumers receive account credit or up to \$17.50 per visit in cash for recycling the containers.

D. A Plain Meaning Interpretation of "Recycling Center" is Consistent with Washington County's Definition of "Recycling Center"

While the BDC does not expressly define the term "recycling center," Washington County's Community Development Code ("CDC") does. Washington County's definition is a particularly apt reference and useful definitional guide given: (1) the geographic patchwork which characterizes the city/county boundaries in the Raleigh Hills, West Slope, Montclair, Garden Home, Cedar Hills, Aloha, Cooper Mountain, Bethany, Reedville and other areas; and (2) the close administrative working relationship between the City of Beaverton and Washington County on land use and other issues (see the Beaverton-Washington County Urban Planning Area Agreement).

Washington County's definition of Recycling Center is found at Section 430-115 of the Washington County CDC. The definition in relevant part provides a "Recycling Center" is:

any portion of a lot . . . used for the purpose of . . . sorting, handling, processing . . . materials that cannot, without further reconditioning, be used for their original purposes, including such materials as glass, paper, plastic and aluminum

The Washington County definition is a sensible and straight-forward definition that describes the OBRC's project. Individual consumers feed redeemable glass, plastic, and aluminum beverage containers into machines which sort and crush these containers. This initial processing prepares the containers for transport from the site. Aluminum cans and plastic bottles may be baled before they are hauled away for further processing.

Similar to the BDC, Washington County's CDC directs that recycling centers must be sited in the areas zoned industrial. The CDC and BDC both also allow for the imposing of appropriate conditions on recycling centers to protect the public from potential adverse impacts (compare BDC 20.15.20 with CDC 207-5.1). Given the potential for recycling centers like the OBRC's to degrade livability nearby if unconditioned, such an approach is well-tailored for both Beaverton and Washington County.

E. Those Challenging the OBRC's Current Location Do Not Oppose Approval of an OBRC Recycling Center Which is Consistent With the BDC

Those challenging the location of the OBRC and the process used to permit the facility, do not oppose approval of an OBRC recycling center which is consistent with the BDC. A plain-



language, practical reading and application of the BDC provides a recycling center can be permitted as a conditional use in the Industrial zone which sits south of Beaverton-Hillsdale Highway and straddles Highway 217. The security and livability issues that this type of recycling center creates will be mitigated by siting the use in the Industrial zone and by the ability of staff to impose reasonable conditions of approval and operation. While my clients likely would participate in any discussion about appropriate conditions for such a proposal, they understand the BDC contemplates recycling centers are appropriate for the Industrial zone areas.

F. If Beaverton Believes Siting Recycling Centers in Commercial Zones is Good Policy, Use of a Director's Interpretation Clearly is the Wrong Approach to Implementation

While the bottle bill is considered landmark legislation in Oregon, our state also has a long history of public participation in the land use decision making process. The Beaverton Development Code, which was adopted after significant public participation, provides recycling centers must be cited in areas zoned Industrial. Given this fact, before Director Twete excepts the OBRC centers from this requirement on a city-wide basis, my clients suggest a better approach would be to engage in a public process at which the pros and cons of OBRC centers are fully discussed and examined.

If Beaverton desires to adopt a policy that OBRC facilities may be sited outside Industrial zoned areas, Beaverton residents would be served best by a legislative amendment to the BDC. A legislative process would allow for the community to examine and understand what OBRC is proposing conceptually before permits are issued, and to allow for discussion the issue fully before policy is made. Given the OBRC's position, one example of a relevant discussion point during such a process is whether OBRC centers should be allowed in Commercial and Multi-Use zones. Another point of discussion given the use approval sought by the OBRC is whether recycling centers -- wherever they are allowed -- should be processed as a conditional use so that public safety and livability issues can be addressed by city decision makers on a case-by-case basis given the facts. During consideration of legislative changes to the BDC, the OBRC would be free to make its best case for which zones should allow for siting of the OBRC facilities and whether the BDC should require approval of such facilities to be processed under the standards for conditional uses, as they are now.

Conclusion

Jesuit High School and my clients residing in the Royal Woodlands neighborhood respectfully request Director Twete determine OBRC's operation at the former Pier One property cannot be classified as an allowed use in the Community Service Zone because the facility is a recycling center, a use that can be sited only in areas zoned Industrial. Applying the plain language of the BDC as it is written respects the community in two important ways. First, this approach respects the earlier public process which resulted in adoption of the relevant code language. The Beaverton community relies on the concept that language in the BDC is understood and applied in a straight-forward fashion. Second, this application acknowledges and respects the real



problems created for the Beaverton community surrounding the OBRC as a result of its application for development being wrongly submitted and processed incorrectly.

The fact that the OBRC facility is already sited should not be given any weight in determining the proper application of the BDC. Despite the plain language in the code, OBRC took a calculated risk in its interpretation of the BDC and its decision to move ahead with construction despite appeal of Beaverton Community Development's land use approval. As a result, OBRC has a finished project that is operating illegally and which is adversely impacting the public safety of nearby students, residents, and businesses. The community should not be required to bear the risk of OBRC's decision to move ahead while the appeal process went forward, and my clients urge Director Twete to place no weight on the initial approval by Beaverton Community Development.

If Beaverton policymakers believe the BDC is too restrictive, my clients suggest this matter should be raised as part of proposed legislative changes to the BDC so that the citizens of Beaverton are engaged in a full city-wide discussion and deliberation about appropriate locations and conditions for proposed OBRC facilities. If code changes are necessary, a public and truly deliberative process is a better approach than the changing of policy through one individual development application with no opportunity for meaningful public participation.

Please do not hesitate to call me if you have any question about the contents of this letter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "C-1001" or similar, written in a stylized, cursive-like font.

Michael G. Neff

Haglund Kelley LLP



Anna Slatinsky

From: richard.skayhan <richard.skayhan@comcast.net>
Sent: Wednesday, February 07, 2018 3:01 PM
To: Anna Slatinsky
Cc: Cheryl Twete
Subject: Fwd: OBRC

----- Original Message -----

From: Rick Skayhan <ricks@lacoinsurance.com>
To: "richard.skayhan@comcast.net" <richard.skayhan@comcast.net>
Date: February 7, 2018 at 11:27 AM
Subject: OBRC

Dear Ms. Slatinsky and Director Tweete,

I've been informed today is the final day to submit comments about an upcoming decision regarding the Oregon Bottle Recycling Center on Beaverton Hillsdale Highway in Beaverton.

I've heard from neighbors who let me know they had planned to do the same and how they've been impacted by the opening of the center. I know some attorneys will be writing to you as well about the legal considerations related to the OBRC.

Rather than do a long diatribe . . . I thought maybe giving you a short walk through our 11 year history in the neighborhood will paint the appropriate picture. We have a wonderful neighborhood. Almost every house on our street has remodeled or improved their home in the last five years, an illustration of how committed we all are to staying in the neighborhood.

When we first arrived, the area around McMillan Park was a known hangout for drug deals and high school parties on the weekend or after local sports events. Many of us made repeated calls to both THPRD security and BPD to alert them to what was happening. Even though patrols increased, the crime, litter and park vandalism was still happening. About 3-4 years ago, THPRD brought in crews to eradicate and remove much of the brush in the park and created a clear line of sight from Chestnut Place to the apartment complex on Jamieson Road and some additional thinning of the scrub trees around the creek. Unsurprisingly, much of the negative activity stopped. Two years ago, THPRD moved the playground area from the back side of the park to close to Chestnut Place. Since that time we've had all kinds of families, couples and dog walkers amicably use the park without major incident.

That all has changed in the last year. We've witnessed car break ins on our street, hypodermic needles in the park, panhandling in the park, public drinking of alcoholic beverages, abandoned grocery carts and persons unknown pawing through recycle containers on the sidewalk. Further, I commute every day from our home in Beaverton to an office in Sylvan and have personally witnessed people going through recycle containers on SW 96th, SW 103rd, SW 102nd, SW Laurelwood and SW 87th. Two weeks ago, I was driving down SW 96th and saw a car on the side of the road near the intersection with SW McMillan---with its flashers on. I slowed down anticipating a need to stop and saw a male with knit cap, dark jacket and jeans going through a recycle container across from the car. As I neared, I noticed he had a white plastic bag of cans and bottles at his feet and was dropping containers from the bin into the bag. I've witnessed multiple near misses on BHH as drivers are trying to go east out of the OBRC and conflicting with traffic coming out of Valley Plaza and the west entrance to Jesuit HS.

While there's no direct evidence the OBRC has caused the negative changes to our neighborhood, the history of the last year I think speaks for itself.

I urge you to define the facility as a Recycling Center so that it can be justifiably moved to an industrial space. I understand such a decision could put it just a stone's throw from our street in the industrial area on SW Western but I personally believe it is the appropriate move for our neighborhood, the businesses on BHH and the City of Beaverton.

Thank you for your time. Feel free to contact me about any of the above.

Sincerely,

Richard Skayhan

4820 SW Chestnut Place

Beaverton, OR 97005

C. 503.810.8499

RECEIVED
CITY OF BEAVERTON

JAN 23 2018

Trisha McPherren
9115 SW Club Meadow Lane
Portland, OR 97225

COMMUNITY DEVELOPMENT

January 18, 2018

Anna Slatinsky
Planning Division Manager
City of Beaverton, Community Planning Department
12725 SW Millikan Way
Beaverton, OR 97076

RE: DI2017-0003 Oregon Beverage Recycling Cooperative (OBRC) Beverage Container
Redemption Center (BCRC) Director's Interpretation

Dear Ms. Slatinsky,

It has come to my attention that the BCRC land use for the property at 9307 SW Beaverton-Hillsdale Hwy, is not of a use listed in BDC Section 20.10, as allowed in the city's Community Service (CS) Zone.


Rather, the BCRC is of an industrial type, as defined in Section 20.15.10. Specifically, it is a recycling center. A recycling center is not currently mentioned in the CS Zone Section, but it is conditionally approved for Industrial Land Use. The problem is, the OBRC does not consider the BCRC to be a recycling center, but rather a redemption or collection business. However, the collection of beverage containers, packaging, and transportation of those containers, is still subject to the same considerations as a recycling center, namely, potentially toxic substance containment near the Hall Creek Wetlands area, increased vector control concern, and bigger traffic flow issues.

Throughout the process, OBRC has repeatedly promised that the facility will be clean and staffed during the open hours of operation. I can assure you that this is most often not the case, simply due to the nature of the business of recycling beverage containers. While I concur that the facility most often has one staff member on site during normal business hours, my family members have visited during normal business hours and found no attendant, broken collection machines, and dirty floors.

It makes more sense for the business to operate in the Regional Center, an area that is more equipped to handle traffic, trucks, noise, and waste. This would also be more convenient for pedestrian patrons, who must now travel several miles on foot, often pushing a shopping cart from a Regional Center business, which is abandoned along Beaverton-Hillsdale Highway once their patronage is concluded. Who would want to push it all the way back?

I urge your department to consider the impact that an Industrial business is currently having on the Community Service Zone and the Residential Zones immediately adjacent to it. Industrial traffic, noise, and vector control are all factors that cannot be reasonably managed in the CS Zone and are more suited to an Industrial Land Use or Regional Center property. The families in our neighborhood would be most grateful for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script, reading "Trisha McPherrren".

Trisha McPherrren
503-442-1121
mcpherrrent@gmail.com

Anna Slatinsky

From: Trisha McPherren <mcpherrent@gmail.com>
Sent: Friday, January 19, 2018 9:44 AM
To: Anna Slatinsky
Subject: DI2017-0003 OBRC BCRC Director's Interpretation

Dear Anna,

I am sending a formal letter by mail regarding this case, but I realized that I failed to mention in it that I commend the environmental stewardship and goals of the ORBC. They have, however, simply chosen a site that is inconvenient to their patrons, untenable for their operation, and inapplicable under the development code for the Community Service Zone.

I appreciate the time you are spending to solve this dilemma.

Thank you!

Trisha McPherren
503-442-1121

Michael Matschiner
9275 SW Club Meadow Lane
Portland, Oregon 97225
(503) 969-3807

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CITY OF BEAVERTON

FEB 07 2018

COMMUNITY DEVELOPMENT

February 4, 2018

City of Beaverton
Community Development Department
Planning Director
PO Box 4755
Beaverton, Oregon 97076

REGARDING: OREGON BEAVERTON COOPERATION (OBRC) BEVERAGE CONTAINER REDEMPTION
CENTER (BCRC) DIRECTOR'S INTERPRETION

To Whom it May Concern:

I have lived at my current address for over 25 years raising my children and grandchildren. Since the opening of the OBRC, BCRC facility, my neighborhood has changed dramatically. Specifically, since the opening of the OBRC, BCRC facility:

- Public urination and defecation on my property;
- Intoxicated people drinking on my property;
- People leaving their garbage on my property;
- Mentally ill people climbing trees and shouting obscenities;
- People rummaging through my garbage;
- Abandoned shopping carts on my property
- Constant bottle rattling, rolling, breaking;
- People hollering, swearing, shouting;
- People throwing food over my fence;
- People trying to break into my vehicles;

I was never – not once – informed by the City of Beaverton about this facility and the impact it would have on my neighborhood. This facility does not support a residential neighborhood. A facility of this type belongs in a commercial space not adjacent to a neighborhood.

I am requesting a written response to my letter detailing why the City of Beaverton located the OBRC, BCRC facility adjacent to a neighborhood. And, I am requesting that the OBRC, BCRC facility be moved from its current location.

Michael Matschiner

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CITY OF BEAVERTON

FEB 07 2018

COMMUNITY DEVELOPMENT

Brandon and Holli Bridgens
9240 SW Club Meadow Lane
Portland, OR 97225

January 20, 2018

Anna Slatinsky
Planning Division Manager
City of Beaverton, Community Planning Department
12725 SW Millikan Way
Beaverton, OR 97076

RE: DI2017-0003 Oregon Beverage Recycling Cooperative (OBRC) Beverage Container Redemption Center (BCRC) Director's Interpretation

Dear Ms. Slatinsky,

It has come to our attention that the BCRC's land use for the property at 9307 SW Beaverton-Hillsdale Hwy, is not a use listed in BDC Section 20.10, as allowed in the city's Community Service (CS) Zone.

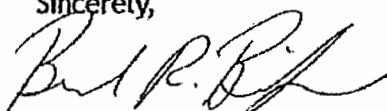
The BCRC is an industrial type, as defined in Section 20.15.10. It is a recycling center. A recycling center is not currently mentioned in the Community Service (CS) Zone Section, but it is conditionally approved for Industrial Land Use. The OBRC does not consider the BCRC to be a recycling center, but rather a redemption or collection business which is not accurate.

I urge your department to consider the impact that an industrial use business is currently having on the Community Service Zone and the Residential Zones immediately adjacent to it. Industrial traffic, increased auto traffic, increased pedestrian traffic, noise (both BCRC industrial noise, i.e. conveyors belts, compactors, bottles rolling down the hill, bottles being loaded in carts to be taken inside and patron's conversations/arguments/offensive language) and offensive odors, i.e. alcohol and smoke are all factors that we are currently experiencing. These factors cannot be managed in the Community Service Zone and are more suited to an Industrial Land Use property.

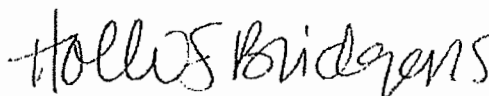
As long-time residents (of 17 years) and parents of 2 young children, the impact this is having on our lives and personal safety is concerning. We have contacted the police department numerous occasions for public urination, littering, vulgar language, patron arguments, loitering and people peering over our fence line. We live next door and witness daily events. We are concerned about our livability and long-term property values. Prior to the BCRC, Pier One Imports was located in the property and we had no issues. They were excellent neighbors. We have many businesses that are located near us but have never experienced any problems or concerns like we are currently experiencing with the BCRC.

I appreciate your time in reviewing this information. If you have any questions, please feel free to contact us.

Sincerely,



Brandon and Holli Bridgens
brbridgens@icloud.com
hsbridgens@hotmail.com



Brandon: 503-349-4138
Holli: 503-348-0238
Home: 503-297-4791

Brandon and Holli Bridgens
9240 SW Club Meadow Lane
Portland, OR 97225

January 20, 2018

Anna Slatinsky
Planning Division Manager
City of Beaverton, Community Planning Department
12725 SW Millikan Way
Beaverton, OR 97076

RE: DI2017-0003 Oregon Beverage Recycling Cooperative (OBRC) Beverage Container Redemption Center (BCRC) Director's Interpretation

Dear Ms. Slatinsky,

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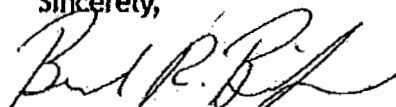
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I urge your department to consider the impact that an industrial use business is currently having on the Community Service Zone and the Residential Zones immediately adjacent to it. Industrial traffic, increased auto traffic, increased pedestrian traffic, noise (both BCRC industrial noise, i.e. conveyors belts, compactors, bottles rolling down the hill, bottles being loaded in carts to be taken inside and patron's conversations/arguments/offensive language) and offensive odors, i.e. alcohol and smoke are all factors that we are currently experiencing. These factors cannot be managed in the Community Service Zone and are more suited to an Industrial Land Use property.

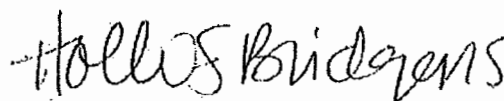
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I appreciate your time in reviewing this information. If you have any questions, please feel free to contact us.

Sincerely,



Brandon and Holli Bridgens
brbridgens@icloud.com
hsbridgens@hotmail.com



Brandon: 503-349-4138
Holli: 503-348-0238
Home: 503-297-4791

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FEB 05 2018

Anna Slatinsky
Planning Division Manager
City of Beaverton
Community development department
P O Box 4755 Beaverton Oregon 97076

COMMUNITY DEVELOPMENT

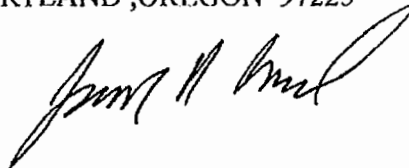
Case file D12017 -0003

503 526 2429

As a resident living on CLUB MEADOW LANE since 1968 I have watched the development of the commercial property across the street from me for many years . I was always well done and had little affect on the livability of my neighborhood . However the change of the building now known as Oregon Beverage Recycling Cooperative has dramatically changed that. Looking at the map you will see 13 residential tax lots directly affected buy this intrusion on the value and quality of living on CLUB MEADOW LANE Each I am guessing adding 2000 dollars or more to Washington county Tax base. OR 26000 revenue on residential C ML. No small thing. I believe we should have been informed by Planning depart that our property values will all be diminished by the collection center. The noise, the horrific smell [walk in the center yourself and imagine it were you live] and the new transit people visiting our street. has profoundly reduced the livability and value of our homes. The closer to the collection center the greater the loss. Would you buy a home that smells of stale beer and bottles clanning. The Grocers Assoc, are glad to get rid of the responsibility and nuisance of bottle redemption since it adds nothing to there bottom line, however the impact of there actions should not fall on a residential neighborhood who has little power to protect itself. This is clearly a miss-use of the zoning rules and it disappoints me that the Beaverton Planning Depart let this happen to our neighborhood. I cant speak for my neighbors but but at age 77 living on SS, my home represents the savings of a lifetime of work and I am deeply depressed by this government action taking what little I have from me.

JOSEPH CONRAD
9207 SW CLUB MEADOW LANE
PORTLAND ,OREGON 97225

CC Greg Malinowski Dist 2
155 North First Ave MS-21
Hillsboro, Oregon 97214





200 SW Market Street, Suite 1777
Portland, Oregon 97201-5771

T 503.225.0777
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Michael E. Haglund
Michael K. Kelley
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmshiemer
Joshua Stellmon
Eric J. Brickenstein
Christopher T. Griffith

LeRoy W. Wilder
Retired

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City of Beaverton

MAY 11 2018

Planning Division

May 11, 2018

VIA REGULAR MAIL

Cheryl Twete
Community Development Director
12725 W Millikan Way
Beaverton, OR 97006

Dear Director Twete:

Enclosed is an appeal of DI2017-0003, Director's Interpretation for Oregon Beverage Recycling Cooperative (OBRC) Beverage Container Redemption Center (BCRC). Also enclosed is a check for the appeal fee in the amount of \$250.00. I am the single appellant representative for all appellants to this appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael G. Neff', written over a horizontal line.

Michael G. Neff

MGN/frf
Enclosures

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City of Beaverton

MAY 14 2018

Planning Division

Beaverton
OREGON

CITY OF BEAVERTON

Community Development
Department
Planning Division
12725 SW Millikan Way
PO Box 4755
Beaverton, OR. 97076
Tel: (503) 526-2420
Fax: (503) 526-2550
BeavertonOregon.gov

OFFICE USE ONLY

FILE #: APP2018-0002

FILE NAME: BCRC Appeal 2

TYPE: 2

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FEE PAID: 250 -

CHECK/CASH: 2949

SUBMITTED: 5/14/18

NAC: _____

APPEAL OF A LAND USE DECISION

Revised 01/2016

PLEASE SELECT THE SPECIFIC TYPE OF APPEAL FROM THE FOLLOWING LIST:

☐ APPEAL OF A TYPE 1 DECISION

☐ APPEAL OF A TYPE 3 DECISION

☒ APPEAL OF A TYPE 2 DECISION

☐ OTHER

APPELLANT NAME(S):

Glenwood 2006, LLC

SIGNATURE(S): *(Original Signature(s) Required)*

Robert T. Franklin, owner

EACH APPELLANT MUST HAVE PROVIDED EVIDENCE TO THE DECISION MAKING AUTHORITY THAT WAS CONTRARY TO THE DECISION.

APPELLANT REPRESENTATIVE: *All pre-hearing contact will be made solely to this person.*

IF MORE THAN ONE APPELLANT, APPELLANTS MUST DESIGNATE A SINGLE APPELLANT REPRESENTATIVE.

NAME: E. Michael Connors

COMPANY: Hathaway Larson LLP

ADDRESS: 1331 NW Lovejoy St., Ste. 950

CITY, STATE, ZIP Portland, OR 97209

PHONE: 503-303-3111

FAX: 503-205-8406

SIGNATURE: E. Michael Connors *(Original Signature Required)*

REQUIRED INFORMATION

SITE ADDRESS: 9307 SW Beaverton Hillsdale Hwy CASE FILE NO. UNDER APPEAL: DI 2017-0003

SPECIFIC APPROVAL CRITERIA / CONDITION BEING APPEALED: See attached letter from E. Michael Connors, dated May 14, 2018.

SPECIFIC REASON(S) WHY A FINDING / CONDITION IS IN ERROR AS A MATTER OF FACT, LAW OR BOTH: _____

See attached letter from E. Michael Connors, dated May 14, 2018.

(Attach additional sheets if necessary)

SPECIFIC EVIDENCE RELIED ON TO ALLEGE ERROR: See attached letter from E. Michael Connors, dated May 14, 2018.

(Attach additional sheets if necessary)

HOW DID THE APPELLANT(S) PROVIDE EVIDENCE TO THE DECISION-MAKING AUTHORITY? WHERE IN THE OFFICIAL RECORD IS SUCH EVIDENCE?: See attached letter from E. Michael Connors, dated

May 14, 2018.

(Attach additional sheets if necessary)



HATHAWAY LARSON

Koback · Connors · Heth

RECEIVED
City of Beaverton

MAY 14 2018

Planning Division

May 14, 2018

VIA HAND DELIVERY

Anna Slatinsky, Planning Division Manager
Beaverton Planning Division
City of Beaverton
12725 SW Millikan Way, 4th Floor
Beaverton, OR 97005

Re: Oregon Beverage Recycling Cooperative - 9307 SW Beaverton Hillsdale Hwy
Appeal of Director's Interpretation Decision
Our Client: Glenwood 2006, LLC

Dear Ms. Slatinsky:

This firm represents Glenwood 2006, LLC ("Glenwood"), the owners of the property located at 9339 SW Beaverton Hillsdale Hwy, Beaverton, OR. The Glenwood members also operate the two veterinary hospitals located on the property, the Laurelwood Animal Hospital and the Oregon Veterinary Specialty Hospital. Glenwood's property is adjacent to the above-referenced property at which Oregon Beverage Recycling Cooperative ("OBRC") is currently operating the beverage container redemption center ("BCRC").

Pursuant to Beaverton Development Code ("BDC") 50.65.1 and 50.65.2, Glenwood hereby appeals the Type 2 Director's Interpretation Decision, dated April 30, 2018 (the "Decision"), approving OBRC's Director's Interpretation Application (the "Application") filed with the City pursuant to BDC 40.25.15. This letter sets forth the appeal information required by BDC 50.65.2 and the City's Appeal Form. We also enclosed with this letter a completed and signed Appeal Form and a check in the amount of \$250 for the appeal fee. For the reasons set forth in this letter, the Director erred in approving the Application and the City Council should deny the Application and require OBRC to relocate the BCRC to another property that is zoned industrial to accommodate this type of industrial Recycling Center use.

A. Specific approval criteria being appealed.

Glenwood is appealing the Decision on the grounds that the Director erred in interpreting and applying the facts to the approval criteria addressed in the Decision, including, but not limited to, BDC Sections 40.25.15.C, 10.50 and 20.10.10, 10.15.1, 20.10.25, Comprehensive Plan Goals 3.7.3, 8.8.1, 9.1.1 and related Comprehensive Plan policies and BDC provisions.

E. Michael Connors
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
mike@hathawaylarson.com
(503) 303-3111 direct
(503) 303-3101 main



B. Specific reasons why the Director's findings were made in error as a matter of fact and/or law.

Although Glenwood addressed the specific legal and factual errors in the Decision below, it is important for the City Council to understand what Glenwood believes to be the fundamental problem with the Decision and this whole process. Since a City planner previously determined that the BCRC was allowed in the Community Service ("CS") zoning district and OBRC improved and began operating the BCRC last year, the Director seems more interested in justifying the previous determination and actions than taking an impartial and objective approach to determining what use category is the most appropriate one to use to regulate the BCRC. That is the simplest explanation for why the Director erroneously concluded that a recycling facility like the BCRC is more similar to a professional service use, supermarket or restaurant than a Recycling Center.

The City Council should not be similarly influenced by this history. The City planner made the previous determination without any public process or input, did not actually perform an analysis of the appropriate use category, and LUBA concluded that it was error for the planner to do so. OBRC made the decision to move forward with the building improvements and operations knowing full well that it was a risk given the pending LUBA appeal. OBRC, who has been operating the BCRC without the required land use approval since September 21, 2017, should not be rewarded or protected because it chose to take this risk.

Nor should the City Council assume that, if it denies the Application, OBRC will not be able to operate BCRCs in the City. Recycling Centers are allowed as conditional uses in the Industrial ("IND") zoning district and there are several IND zoned properties that could accommodate the BCRC. OBRC is not a non-profit and has substantial financial resources to pursue another location. The City Council could also amend the BDC to allow BCRCs in other zones, after going through the required legislative process that allows all citizens an opportunity to weigh in on that proposal.

The Decision is on appeal before the City Council because the surrounding community believes that the BCRC is not an appropriate use in this CS area and it is creating significant impacts and problems for the surrounding community because of its industrial nature. The City Council needs to listen to these citizens as well. If the City Council applies the BDC to the BCRC in an impartial and objective manner, there is no question about the outcome. The BCRC is clearly a Recycling Center and it belongs in the IND zone given its industrial nature.

1. The Director erred in concluding that the BCRC does not qualify as a Recycling Center and therefore cannot be approved as a substantially similar use.

The Director is prohibited from approving a proposed use as a similar use if it already qualifies as a use addressed elsewhere in the BDC. BDC 10.50 provides that: "the Director may not permit a use already allowed in any other zoning district of this Code." BDC 40.25.15.1.C.4 limits the authority of the Director's Interpretation to interpreting "a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use." If the BCRC qualifies as a

use already addressed and regulated in the BDC, it may not be approved as similar to a use allowed as a permitted use in the CS zoning district.

A “Recycling Center” is a type of use already recognized and regulated by the BDC. BDC 20.15.20 allows “Salvage Yards, Recycling Centers and Solid Waste Transfer Stations” as conditional uses in the IND zoning district. (Emphasis added). The Director erred by concluding that the BCRC is not a Recycling Center, and therefore, erred in approving the BCRC as a similar use, for multiple reasons.

The Director erred in concluding that the BCRC is not a Recycling Center notwithstanding OBRC and the Director’s acknowledgements that the central purpose and activity taking place at the BCRC is recycling. OBRC identifies itself as a “Recycling Cooperative” and markets its business as recycling. Application Narrative, pp.2-7. The Director acknowledged that “BCRC’s use is recycling,” the “BCRC is in fact a new type of recycling business” and the BCRC is consistent with Comprehensive Plan Goal 8.8.1(a) because it makes “recycling” accessible by “[a]llowing recycling/redemption centers in areas that easily serve the population encourages redemption and recycling.” Decision, Attachment A, pp.2, 4-5. (Emphasis added). It was error for the Director to conclude that an operation that is a “recycling business,” whose primary use is “recycling” and that furthers the goals of recycling by providing accessible “recycling/redemption centers” is not a Recycling Center.

The Director erred by failing to apply the dictionary definition of a Recycling Center to the BCRC. Terms that are not defined in the BDC are required to be interpreted based on their dictionary definition. BDC 10.20.6.B. *PGE v. BOLI*, 317 Or 606, 611, 859 P2d 1143 (1993). Although the Director noted a dictionary definition of the term “recycle” (“to pass again through a cycle of changes or treatment”), she never actually applied that definition to the BCRC. Nor did the Director address the dictionary definitions provided by the parties.¹ Instead, the Director ignored the dictionary definitions and determined that the BCRC is not a Recycling Center based almost exclusively on its size and impacts. Decision, Attachment A, pp.5-7. The BDC requires the City to use the plain language or dictionary definition of terms not defined in the BDC. BDC 10.20.6.B The BCRC qualifies as a Recycling Center under any of the dictionary definitions cited by the Director and parties because it is a center that exclusively accepts, processes, stores and transports recyclable material. None of these definitions reference the size and/or impact characteristic or threshold that the Director predominately relied on.

The Director erred by failing to consider the regulatory and industry definitions of a Recycling Center. As part of its Application, OBRC argued that the Director should consider the definitions of Metro and the solid waste/recycling industry for this type of facility, and

¹ Glenwood noted that the term “recycle” is defined in the dictionary as “to process (something such as liquid body waste, glass or cans) in order to regain material for human use.” Letter from E. Michael Connors, dated February 7, 2018, p.5. OBRC claimed that the definition of “recycling” is “a location where ‘recycling’ occurs” or “convert (waste) into reusable material.” Application Narrative, p.9.

Glenwood and other parties agreed.² Application Narrative, p.10. Metro defines a “Recycling drop center” as “a facility that receives and temporarily stores multiple source-separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.” Metro Code Section 5.00.010 (Definitions). The BCRC clearly qualifies as a “Recycling drop center” – it receives, processes, temporarily stores and transports recyclable material to a third party for reuse or resale. Application Narrative, pp.2-7. Moreover, Metro specifically identifies BCRCs as a “Recycler” on its website. Letter from E. Michael Connors, dated February 7, 2018, Exhibit D. The BCRC also meets the definition of a “Recycling Center” under Washington County’s code:³

“[A]ny portion of a lot . . . used for the purpose of . . . sorting, handling, processing . . . materials that cannot, without further reconditioning, be used for their original purposes, including such materials as glass, paper, plastic and aluminum.” Washington County Community Development Code (“CDC”) Section 430-115.

The Director erred by ignoring the fundamental similarity between the BCRC and the uses listed along with Recycling Centers in BDC 20.15.20 - Salvage Yards and Solid Waste Transfer Stations. The core business of all of these uses involves the same thing or product - waste material. The particular type of waste material and the end result of the process may be different among these uses, but they all share the common trait of receiving, processing, storing and/or transporting waste material. It is precisely because the nature of the product (waste material) has characteristics that create unique impacts on surrounding properties different from typical commercial or residential uses that the City Council decided to limit these uses to the IND zone. BDC 20.15.20. The Director erred by failing to consider this important similarity when determining if the BCRC is a Recycling Center.

The Director erred by conflating the BCRC, whose sole purpose and exclusive use is recycling activity, with other uses that include only minor or incidental recycling. The Director concluded that the term “Recycling Center” must be narrowly construed because otherwise it could “include any and all recycling activities that occur in the city,” citing ordinary recycling activity that occurs in typical households, offices, schools, parks and restaurants. Decision, Attachment A, p.5. This is a straw man argument. None of the parties have argued that all recycling is prohibited in the CS zone or that any use that includes some recycling, no matter how minor or incidental, qualifies as a Recycling Center. The use in question is a “Recycling Center,” not recycling per se. The BCRC does not involve minor, incidental or ancillary recycling like these other examples – recycling is the core or exclusive use. So the relevant question before the City

² It was not until after Glenwood and other parties demonstrated that these regulatory definitions undermined OBRC’s argument that OBRC changed its position regarding their relevancy.

³ Washington County’s code is highly relevant because the BCRC borders Washington County and there is a close working relationship between the City and the County on land use and other issues.

Council is whether a use that exclusively accepts, processes, stores and transports recycled material qualifies as a Recycling Center.

The Director erred by concluding that a Recycling Center is determined based on its scale and intensity using arbitrary factors that are not set forth in the BDC or the applicable definitions. Decision, Attachment A, pp.6-7. The Director does not explain where these factors came from or why she believes they are controlling in determining what qualifies as a Recycling Center. BDC 40.25.15.1.C.4 does not focus on the scale, intensity or impacts of the use – it does not even reference these terms. The similarity of uses depends on the nature of the use itself, not just its size or impacts.⁴

The Director erred by concluding that the BCRC does not qualify as a Recycling Center because it is not as large or intense as the Environmentally Conscious Recycling (“ECR”) facility in Multnomah County. Decision, Attachment A, pp.5-6. There is nothing in BDC 20.15.20, the BDC in general or the dictionary definitions that requires a Recycling Center to be a particular size or intensity, and certainly not one as large as ECR which is one of the largest solid waste operations in the Metro area. Metro and other local jurisdictions do not require a certain size in order to qualify as a recycling center. The Director is inserting a significant qualifying factor that is not supported by any provisions in the BDC or the dictionary definitions.⁵ Nor is ECR a comparable facility. ECR is a large regional solid waste transfer facility that handles both recycling and solid waste material, and is not even located within the City. Why would the City base its definition of a Recycling Center on a regional operation, located outside the City, that wasn’t approved as a Recycling Center?

The Director erred by ignoring the only relevant scale factor that is included in the BDC – Salvage Yards. Recycling Centers are regulated the same as Salvage Yards, and therefore the definition of a Salvage Yard is relevant context for determining scale and intensity. BDC 20.15.20. The definition of a Salvage Yard provides: “[t]hree or more dismantled or inoperable materials on one lot shall constitute a salvage yard.” BDC Chapter 90. Therefore, the City determined that three pieces of dismantled or inoperable materials are of a sufficient scale and intensity to qualify as an industrial Salvage Yard that should be limited to the IND zone. There is no question that three pieces of dismantled or inoperable materials, even if they were large items such as vehicles, are not nearly as large in scale and intensity as the BCRC. This particular BCRC processes approximately 30 million beverage containers per year and consists of a 10,889 sq. ft. building, loading dock and a 16,000 sq. ft. parking lot with 41 parking spaces. The BCRC

⁴ Using one of the Director’s own examples, a restaurant and a supermarket may have similar traffic impacts but that does not mean that they are substantially similar uses. Decision, Attachment A, p.7. They are very different uses notwithstanding the fact that some of their impacts may be similar.

⁵ As BDC 10.20.3 provides: “The Code shall be read literally. Regulations are not more or less strict than as stated.”

is far larger and more intense than the type of Salvage Yards that is expressly included in the same use category as Recycling Centers.⁶

The Director erred in concluding that the BCRC is not a Recycling Center because the activity occurs in an enclosed building. Decision, Attachment A, p.6. There is nothing in BDC 20.15.20 or the dictionary definitions that suggest a Recycling Center is conducted exclusively outside. The BDC categorizes a number of indoor uses as industrial in nature – Concrete Mixing and Asphalt Batch Plants; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; Laboratory; Warehousing, Wholesale and Distributive Activities; Marijuana Processing; Mail Order Houses. BDC 20.15.20. Some industrial uses, such as “manufacturing, assembly, fabricating, processing, packing, storage, wholesale and distribution activities” are specifically required to be conducted in an enclosed structure to mitigate the impacts. BDC 20.15.25.12.a. If these indoor uses are industrial, why would a Recycling Center not be industrial simply because the activity occurs within an enclosed building?

The Director erred by concluding that “noise, odor and other potential impacts” are limited because the BCRC is enclosed. This finding is contrary to the substantial evidence in the record. The Director received extensive written comments from Glenwood, Jesuit High School, the Royal Woodlands neighborhood and other surrounding neighbors regarding substantial impacts from the BCRC that have changed the very character of the neighborhood. The BCRC is extremely noisy, including the dumping of cans and glass bottles into carts, rolling of full carts through the parking lot and the noise generated by the machines crushing cans and glass bottles in the processing area. Used beverage containers obviously generate odor - 30 million of them will pass through this one facility every year. The BCRC generates significant traffic impacts considering the daily trips from customers and large trucks transporting the material. There has been a substantial increase in security and safety related incidents in the immediate area since the BCRC began operating, as evident by the City’s own report from the Beaverton Police Department, dated April 9, 2018. These are precisely the type of impacts that make the BCRC incompatible with the surrounding commercial and residential uses.

The Director erred in concluded that the BCRC cannot qualify as a Recycling Center because its external impacts are not as great as the impacts of permitted uses in the IND zone. Decision, Attachment A, p.5. This approach is totally contrary to the BDC. If the BDC states that a particular type of use requires a conditional use in the underlying zone, the City must require a conditional use process and approval regardless of whether or not the specific use in question has

⁶ Although the statement “[t]hree or more dismantled or inoperable materials on one lot shall constitute a salvage yard” is about as clear a statement as possible, the Director dismisses this comparison on two grounds. First, the Director claims that this statement “serves a different purpose from the rest of the definition” and is intended to address “dissonant impacts,” but she fails to cite any language in the definition to support this distinction. Decision, Attachment A, p.4. The statement was expressly included in the definition and therefore is clearly relevant to the size and intensity question. Second, the Director claims that the statement is not representative of a typical salvage yard. Decision, Attachment A, p.4. Even if that were true, it still defines the minimum size and intensity that qualifies as a salvage yard. If the BCRC is significantly larger and more intense than this type of salvage yard, how can the Director conclude that the BCRC is not large or intense enough to qualify as one of these industrial uses?

greater impacts than the permitted uses allowed in the same zone. If this approach was adopted by the City Council, very few uses would ever qualify as conditional uses in the industrial zones. The IND and related industrial zones allow the following uses as permitted uses: hospitals, wholesale and retail lumber yards, cold storage plants, major automotive services, bulk fuel dealerships, heavy equipment sales, manufacturing plants and operation centers. BDC 20.15.20. All of these uses are intense uses with significant impacts. If only recycling operations with greater impacts than these permitted uses could qualify as a Recycling Center, very few uses would ever qualify.

The Director erred in concluding that the BCRC should not be treated as a Recycling Center because Comprehensive Plan Goal 9.1.1 encourages the conservation of industrial land. Decision, Attachment A, p.2. This Goal does not allow the City to ignore the BDC simply because it limits a particular use to the IND zone that staff would prefer be preserved for more intense industrial uses. BDC Chapter 20 controls which uses are allowed in the various zones, not Comprehensive Plan Goal 9.1.1. If Recycling Centers are limited to the IND zone, that is where they must be sited. If the City wants to change that policy, it must legislatively amend the code, not use a Director's Interpretation process as an end-round the code. Given the relatively small size of the BCRC, it will have only a minimal impact on the amount of industrial zoned property available for other industrial development.

For all of these reasons, the Director erred in concluding that the BCRC does not qualify as a Recycling Center. The BCRC is clearly a Recycling Center given the nature of the use, the dictionary and regulatory definitions and its similarity to the other waste-related industrial uses.

2. The Director erred in concluding that the BCRC is allowed in the CS zone because bottle redemption facilities have been allowed as part of supermarkets.

The Director erred in concluding that the BCRC should be allowed in the CS zone because bottle redemption facilities have historically been allowed at supermarkets, and therefore it qualifies as a "Retail Trade" use. Decision, Attachment A, pp.6 & 8. Even if the City has historically allowed bottle redemption facilities at supermarkets, that in-and-of-itself is not a legitimate basis for ignoring the BDC and the express requirement to site Recycling Centers in industrial areas. More importantly, there are two key distinctions between the BCRC and bottle redemption facilities at supermarkets.

First, the BCRC is a standalone recycling center that must qualify as a permitted use on its own. The bottle redemption facilities located at supermarkets are accessory or ancillary uses to the principal use – the supermarket.⁷ While accessory or ancillary recycling activity may be allowed in the CS zone if it is a customary part of the primary use, a standalone Recycling Center is not.

Second, the BCRC is significantly larger and more intense than these supermarket facilities. This single BCRC facility will replace the bottle redemption facilities of 24 major grocery stores within a roughly three mile radius. Based on OBRC's own report, it will receive, process, store

⁷ The BDC distinguishes between the "Principal Use" and "Accessory Uses". BDC Chapter 90.

and transport over 30 million containers per year. Letter from E. Michael Connors, dated February 7, 2018, p.2 & Exhibit B. None of the supermarket facilities are nearly as large and intense as the BCRC. It is ironic that the Director relies so heavily on the scale and intensity as a basis for concluding that the BCRC is not a Recycling Center and then completely ignores this issue when comparing the BCRC to the supermarket bottle redemption facilities.

Additionally, the BCRC cannot qualify as a retail use because it does not satisfy the BDC definition of that term. The term "Retail Store" is defined as: "A place of sale to the ultimate consumer for direct consumption and not for resale. The BCRC does not sell anything to its customers. Customers go to the BCRC to redeem or dispose of a product - recyclable containers. That is the core purpose of the BCRC and the entire business revolves around that product. The compensation also flows in the opposite direction of a retail store – it is the customer that is compensated for bringing the product to the BCRC, not the other way around.

3. The Director erred in concluding that the BCRC need only be "more or less" similar to another use to qualify under BDC 40.25.15.1.C.4.

In order for the BCRC to qualify as a use similar to a use permitted in the CS zone, OBRC must demonstrate that it is "substantially similar" to a permitted use. BDC 40.25.15.1.C.4 provides: "When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code." (Emphasis added). A use that is merely similar to another use is not sufficient to qualify as a similar use under BDC 10.50.

Notwithstanding this clear requirement under BDC 40.25.15.1.C.4, the Director erroneously concluded that it is not necessary to determine that the BCRC is "substantially similar" to a permitted use in the CS. The Director explained:

"The Director does not believe the inclusion of the word 'substantially' indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, 'substantially' in this context means 'more or less,' where the focus is on the intensity of activity and the external impacts generated by the activity." Decision, Attachment A, p.7.

The Director's interpretation is flawed because it is inconsistent with the express language in BDC 40.25.15.1.C.4. BDC 40.25.15.1.C.4 requires that the proposed use be "substantially similar" to a permitted use, not "more or less." The term "more or less" does not even appear in the relevant code provision and is very different from the definition of substantially similar. Webster's Third New International Dictionary defines the term "similar" as follows: "Having characteristics alike: very much alike: comparable . . . alike in substance or essentials." Webster's Third New International Dictionary defines the term "substantially" as "in substantial manner." The Director's interpretation ignores the plain language of BDC 40.25.15.1.C.4 and inserts a new standard that is not even contained in the code provision.

Since the Director concluded that the BCRC is only more or less similar to permitted uses in the CS zone, and not substantially similar, the Director erred in approving the Application as a matter of law.

4. The Director erred in concluding that the BCRC qualifies as substantially similar to almost all of the permitted uses in the CS zone.

Although OBRC specifically argued that the BCRC is substantially similar to a “Service Business/Professional Services,” the Director essentially ignored this specific use category. Application Narrative, pp.8-9 & 17; Decision, Attachment A, pp.7-8. Perhaps the Director realized that it was not plausible to conclude that the BCRC is substantially similar to this use category since the list of examples for this use category are “small dental and medical offices, real estate, insurance, administrative facilities, personal care, business; professional, and similar services.” BDC Chapter 90. As we explained to the Director, the BCRC is nothing like these uses. Letter from E. Michael Connors, dated February 7, 2018, pp.8-10.

Instead of focusing on a specific use category, the Director concluded that the BCRC could qualify as similar to “many other uses currently allowed in the CS district,” including but not limited to the Service Business/Professional Services, Eating and Drinking Establishments and Retail Trade. Decision, Attachment A, p.8. The Director reached this conclusion based largely on three factors: traffic impacts, the geographic area it draws customers from and the exchange of goods or services for money:

“Many allowed uses in the CS district have characteristics similar to a BCRC. For example, a drive-up pharmacy restaurant can generate 9.91 trips per 1000 gsf in the pm peak hour, while the BCRC traffic study concludes that it will generate 7.05 trips per 1000 gsf. A number of permitted uses also draw users from a wide geographic area. Large shopping centers, for example, typically draw customers from a regional radius. These uses typically involve an in-person exchange of goods or services for money at an establishment open to the public.” Decision, Attachment A, p.8.

There are several problems with this approach.

The similarity of uses depends predominately on the nature of the use itself, not these ancillary factors. A gas station is more similar to an auto repair shop than a fast food restaurant because of the nature of the use (automotive), even if the traffic impacts and geographic area of customers may be more similar to a fast food restaurant. There is nothing in the BDC to support the concept that the similarity of uses should be judged based on these three arbitrary factors.

The Director focused on only one of the major impacts of the BCRC, traffic, and ignores the other impacts. As previously explained, Glenwood, Jesuit High School, the Royal Woodlands neighborhood and other surrounding neighbors have all complained about other significant impacts from this BCRC facility, including noise, odor, parking and security related issues. While traffic impacts are typical for both commercial and industrial uses, these other types of

impacts are much more typical and intense for industrial uses. The Director ignored these other impacts which support a finding that the BCRC is industrial in nature.

While most commercial uses involve the exchange of goods or services for money, the exchange is the opposite of the BCRC. Customers go to commercial businesses to purchase goods or services from the business. In contrast, customers go to the BCRC to redeem or dispose of recyclable containers. The compensation flows in the opposite direction of commercial uses – it is the customer that is compensated for bringing the recyclable container to the BCRC.

If the City Council adopted this interpretation of the substantially similar use option, it would significantly broaden the types of industrial uses that could qualify as permitted uses in commercial zoning districts. So long as the industrial use has similar traffic impacts and geographic area of customers to any of the permitted commercial uses, and involves some exchange of money, it is permitted in the commercial zones. Clearly the City Council did not intend BDC 10.50 and 40.25.15.C to operate so broadly.

5. The Director erred by using completely different standards and approaches when comparing the BCRC to Recycling Centers versus commercial uses permitted in the CS zone.

Perhaps the most striking aspect of the Decision is how differently the Director approached the BCRC's similarity to Recycling Centers versus commercial uses permitted in the CS zone. Ultimately this appeal comes down to a central question – is the BCRC more similar to a Recycling Center or one of the commercial uses permitted in the CS zone. If the BCRC is more similar to a Recycling Center, which is limited to the IND zone and requires a conditional use approval, than the commercial uses permitted in the CS zone, the City cannot allow the BCRC as a permitted use in the CS zone.

When comparing the BCRC to Recycling Center use, the Director adopted a very strict approach. Although the Director acknowledged that the BCRC is a recycling business, conducts recycling on site and furthers recycling goals by providing accessible "recycling/redemption centers," she concluded that these core similarities were not sufficient. Decision, Attachment A, p.2. Rather, she concluded that the BCRC is not a Recycling Center because it is indoors, not as large as one particular waste facility in Multnomah County and does not receive waste material from commercial haulers. Decision, Attachment A, pp.5-6. Notwithstanding all of the similarities between the BCRC and a Recycling Center, specifically that they share the same core product, business and function, the Director concluded that these similarities were not enough to overcome these specific differences. In this case, the Director essentially ignored the similarities and focused on differences.

When the Director compared the BCRC to general commercial uses permitted in the CS zone, however, she took the complete opposite approach. The Director ignored the fact that the product, type of business and function of the BCRC is very different from the type of commercial uses permitted in the CS zone. Instead, she concluded that the BCRC is similar enough to several commercial uses permitted in the CS zone based solely on three factors: traffic impacts, the geographic area it draws customers from and the exchange of goods or services for

money. Decision, Attachment A, p.8. In this case, the Director essentially ignored the differences and focused on the similarities.

The Director's approach is wholly inconsistent with BDC 40.25.15.1.C.4. The "substantially similar" exception is an exception, not the rule, and is only intended to govern those narrow group of uses that truly are not contemplated in the BDC. BDC 40.25.15.1.C.4 ensures that an applicant cannot exploit the "substantially similar" exception by: (1) getting a use already regulated in the BDC approved as substantially similar to a different use; or (2) getting a use approved even if it is only somewhat similar, as opposed to substantially similar, to a permitted use. The Director has taken the complete opposite approach in the Decision.

6. The Director erred by approving the BCRC when it has been operating without land use approval in violation of the BDC.

BDC 10.15.1 prohibits any person from improving or using a building or premises prior to obtaining the required land use approval. The BDC provides that uses of land that are not expressly listed as permitted or conditional uses in the underlying zone are prohibited. BDC 10.20.4 & 10.20.5. While a party may request a similar use approval pursuant to BDC 10.50 and 40.25, it may not use the property for that use until it obtains the final approval.

There is no question that OBRC has been operating the BCRC without the required land use approval since September 21, 2017. LUBA's remand, which was issued on September 21, 2017, concluded that the OBRC did not have the required land use approval to operate the BCRC and must complete the Type 2 Director's Interpretation process before it can be approved. Since LUBA's decision, OBRC has been operating the BCRC without the required land use approval, in violation of the BDC. LUBA also remanded the Design Review decision, which means that approval is no longer valid and OBRC has not even initiated the remand process for the Design Review decision.

Although Glenwood has repeatedly requested that the City enforce its code and require OBRC to cease operating until it obtains the required approval, the City has repeatedly refused to do so. The City's refusal to enforce its zoning regulations under these circumstances is very troubling. The BDC does not allow a party to operate while its request for approval or remand proceeding is still pending.

Allowing OBRC to continue operating under these circumstances will set a dangerous precedent for the City. Other parties operating in violation of the BDC will use the City's decision in this case as precedent to justify continuing to operate. The City would not be able to treat these parties differently, or it would risk a discrimination or equal protection claim against the City. Why would the City want to establish a precedent for allowing parties to operate in violation of the BDC before getting the required City approval?

C. Specific evidence relied on to allege error.

Glenwood relies on all of the evidence in the record to allege error, in particular the following Exhibits referenced in the Decision:

Exhibit 1.1
Exhibit 1.3
Exhibit 2.1
Exhibit 2.4
Exhibits 3.1 through 3.23.

Glenwood also intends to provide additional evidence supporting the alleged errors prior to the appeal hearing, at the hearing, and as supplements to the record following the hearing.

D. How did the Appellant provide evidence to the Director and where in the official record is such evidence?

Glenwood submitted several comment letters to the Director. Decision, Attachment A, Exhibits 3.4, 3.14, 3.15 and 3.23. Glenwood is relying on the evidence in these documents as well as the Exhibits referenced in Section C above.

Conclusion

For the reasons set forth above, the Director erred in approving the Application and the City Council should deny the Application and require OBRC to relocate the BCRC to another property that is zoned industrial to accommodate this type of industrial Recycling Center use.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/mo
Enclosure

cc: Glenwood 2006, LLC



Senator Michael E. Dembrow
Senate District 23

April 11, 2018

To Local Planning Jurisdictions:

As chairs of the Oregon Senate and House committees that oversee the Oregon Bottle Bill and its implementation, we would like to clarify legislative intention behind the Redemption Center provisions in Oregon law.

Redemption Centers (also known as BottleDrops) were created in Oregon law in 2011, and are defined in ORS 459A.735. They are specific to the Bottle Bill, and represent an evolution of the original concept of the Bottle Bill as expressed by Governor Tom McCall in 1971. We are pleased that the Redemption Center program has been successful in increasing redemption rates, keeping litter out of our communities and natural areas, and increasing recycling in Oregon.

It has come to our attention that there has been confusion as to whether a Redemption Center is considered a Recycling Center under state law. The confusion is understandable: the end goal of the material collected at a Redemption Center is eventual recycling. However, the sole function of the Redemption Centers themselves is to serve as an alternative location to collect containers from consumers, refund



deposits, and to forward those containers in compacted form on to other locations for recycling. As such, they are not Recycling Centers, as no recycling takes place on site.


We in the Oregon Legislature created the Redemption Center program in 2011 for the express and explicit purpose of providing a convenient alternative to grocery store collection of redeemable beverage containers under the Bottle Bill. Redemption Centers must be easily accessible to people who are purchasing and consuming beverages in the area.

We continue to believe that Redemption Centers are appropriate commercial uses that provide an important service to communities across Oregon. We look forward to, and encourage, more Redemption Centers in Oregon, and to shaping Oregon's Bottle Bill with future innovations like this to ensure that the program remains relevant, convenient, and accessible for all Oregonians.

Sincerely,



Michael Dembrow
Chair, Senate Committee on Environment and Natural Resources



Representative Ken Helm
Chair, House Committee on Energy & Environment

Capitol Address: 900 Court St. NE, S-407, Salem, OR 97301
Phone: (503) 986-1723 - Email: sen.michaeldembrow@state.or.us





Oregon Beverage Recycling Cooperative

2017 Annual Report

Oregon Beverage Recycling Cooperative is the industry steward of Oregon's landmark bottle bill. Through our BottleDrop redemption centers and partnerships with retailers, we collect redeemable containers, return deposits to Oregonians, and provide a high quality source of recycled raw material for manufacturers.

We are a not-for-profit cooperative business made up of 108 Oregon beverage distribution companies.

Our workforce of more than 400 employees provides a clean, fast, easy, and accountable system for recycling beverage containers. And just as Tom McCall envisioned it, we deliver a cleaner Oregon at no cost to taxpayers.

We are excited about what we accomplished in 2017. We think you will be too.

2017 ANNUAL BUDGET: \$34 MILLION^{1,2}

BottleDrop Centers & Green Bag Program

35%

BottleDrop Express & Transportation

1%

Material Processing at Statewide Plants

21%

Administration & Compliance

12%

Retailer Services & Transportation

28%

Stewardship Initiatives
(BottleDrop Give, BottleDrop Refill, etc.)

3%

¹ Budget information and data reviewed by the Oregon Liquor Control Commission (OLCC).

DEPOSIT INCREASED, RETURNS SOARED

2017 CONTAINER REDEMPTION RATES



\$25 million³
Estimated value of
2017 unredeemed
deposits

STATEWIDE SERVICE, NO STATE FUNDING

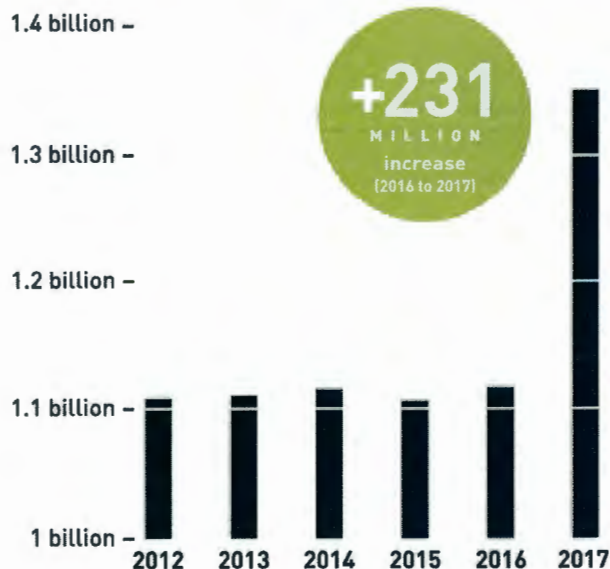
138 million
pounds
material collected

2,500
locations served

400
employees

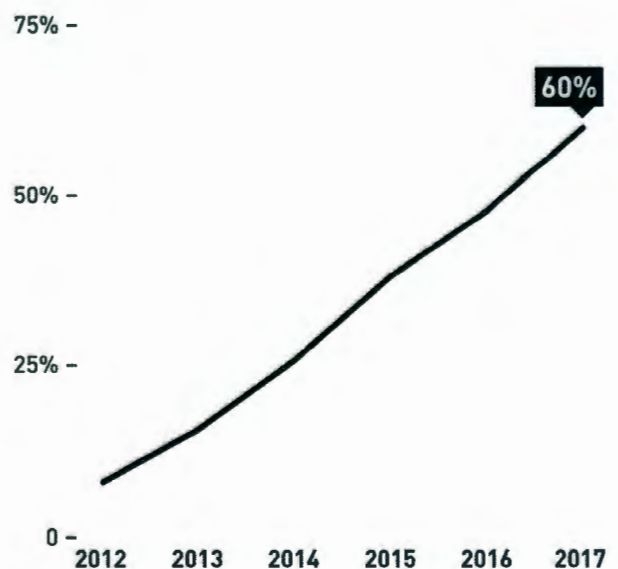
\$0
tax dollars used

MORE CONTAINERS RETURNED IN 2017



TOTAL NUMBER OF RETURNED CONTAINERS

MORE RETURNS THROUGH BOTTLEDROP



PERCENTAGE OF ALL CONTAINERS RETURNED USING BOTTLEDROP

² Budget and redemption data for 2017 in this report is preliminary. OBRC is committed to accurate and transparent accounting, and files an official report to the OLCC as required by Oregon's bottle bill, in June of each calendar year. OBRC does not include the value of scrap material sold in its operating budget.

³ Value of unredeemed deposits is the net value including impact of conversion from \$.05 per container to \$.10 per container.

GREEN BAG ACCOUNTS GROW BY 65%

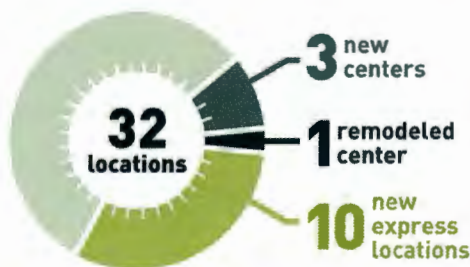
205,157

TOTAL ACCOUNTS

81,884

SIGN UPS IN 2017

14 NEW BOTTLEDROP LOCATIONS



\$2.2 million

Average cost to build a redemption center

STRONGER PARTNERSHIPS & MORE FUNDRAISING

"Our volunteers frequently collect cigarette butts, straws, food wrappers, and the occasional shopping cart at our litter cleanup events. What we rarely pick up, thanks to OBRC and the bottle bill, is redeemable containers."

Joy Hawking
SOLVE Program Manager



ORPET PARTNER PLASTIC FACILITY

17 million pounds of plastic recycled

BOTTLEDROP GIVE FUNDRAISING TOTALS

1,750 total non-profit fundraisers

550 new fundraisers in 2017

\$355,254 raised for non-profits

2018 GOALS

2018 will be another big year for OBRC and BottleDrop. We've been busy preparing for expansion by investing in equipment, hiring new full time staff (16), and adding more capacity at many of our busiest BottleDrop locations. We're excited to meet our 2018 goals:



Open four new BottleDrop centers and sign up 100,000 more people for BottleDrop green bag accounts.



Establish 18 new BottleDrop Express locations to provide more fast, easy, and clean access for Oregonians to return containers and reclaim their deposits.



Launch a refillable bottle program for Oregon's craft beverage industry by building on the successful 2017 pilot program in which nearly 3,000 refillable bottles were returned. In 2018, OBRC will introduce a BottleDrop branded refillable bottle, begin distribution to craft breweries, collect and clean used bottles, and distribute them for reuse.



Expand the use of BottleDrop Give as a source of fundraising for Oregon non-profits through additional outreach, matching and incentive programs, and partnerships.



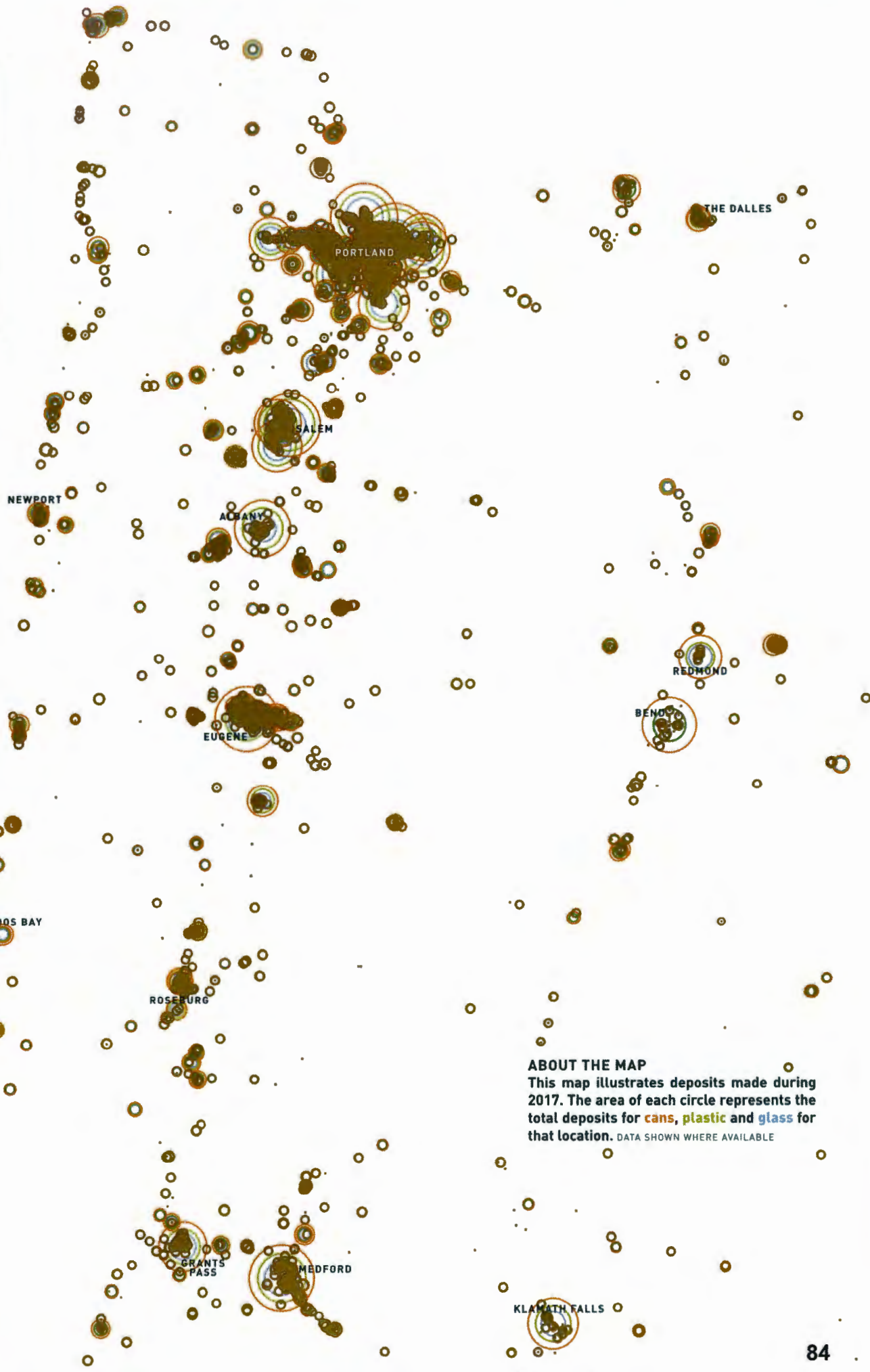
Launch a partnership with the Oregon Community Foundation to support environmental non-profits.



LEARN MORE

www.OBRC.com
www.bottledropcenters.com

Joel Schoening
Community Relations Manager
jschoening@obrc.com



ABOUT THE MAP

This map illustrates deposits made during 2017. The area of each circle represents the total deposits for **cans**, **plastic** and **glass** for that location. DATA SHOWN WHERE AVAILABLE

June 11, 2018

Garrett H. Stephenson
Admitted in Oregon
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C: 503-320-3715
gstephenson@schwabe.com

VIA EMAIL & HAND DELIVERY

Hon. Denny Doyle, Mayor
City of Beaverton
City Council
12725 SW Millikan Way
Beaverton, OR 97076

**RE: Applicant's Response to Appeal of Oregon Beverage Recycling Cooperative's
Type II Director's Interpretation (City File No. DI2017-0003, APP 2018-
0002)**

Dear Mayor Doyle and City Councilors:

This office represents Oregon Beverage Recycling Cooperative ("OBRC") in its request (the "Application") for a Director's Interpretation pursuant to Beaverton Development Code ("BDC") sections 40.25.15 and 10.50, which was approved on April 20, 2018 (the "Decision"). This letter is respectfully submitted in response to the appeal of the Decision (the "Appeal") and asks the Council to reject the appeal and affirm the Decision. It is timely submitted prior to the June 19, 2018 appeal hearing.

The Decision found that OBRC's Beverage Container Redemption Center ("Redemption Center"), located at 9307 SW Beaverton-Hillsdale Highway, is similar to other uses permitted in the Community Service ("CS") zone. The Decision is not itself a permit approval; a Design Review approval for the Redemption Center was approved on February 27, 2017. The Oregon Land Use Board of Appeals ("LUBA") remanded the Design Review approval for a determination of whether the Redemption Center is sufficiently similar to other uses in the CS zone to be considered a permitted use, which is the sole question before the Council in this appeal.

1. Summary.

This letter responds to arguments raised by Glenwood 2006, LLC and Jesuit High School. Most of these arguments follow two general themes. The first theme includes arguments that the Redemption Center is an industrial use. As explained in detail below, a bottle redemption facility is nothing like an industrial use because it serves the end users of retail products, is similar in size and appearance to other retail and commercial uses, and generates mostly single-occupancy vehicle trips that would conflict with industrial traffic. The Redemption Center concept was also intended by the legislature to be located near beverage retailers pursuant to ORS 459A.735–740. **Exhibit 1.** Furthermore, the function of the

Redemption Center is no different than the bottle returns operated by beverage retailers themselves and does not involve any actual processing of recyclables, which are simply collected, packaged, and moved off-site.

The second theme consists of assertions that homeless individuals, drug users, and petty criminals have had an increasing presence in the surrounding area since the Redemption Center began operations. These problems are lamentable but they are certainly not *caused* by the Redemption Center. Rather, they are societal issues and require a City-wide approach. They do not demonstrate that the Redemption Center is not like other commercial and retail businesses in the CS zone. And, it is simply inaccurate to characterize the Redemption Center's patrons this way, the vast majority of whom are law abiding residents of the area and span a wide range of incomes.

2. Explanation of the Redemption Center Use.

The BottleDrop program is a legislative creation. The concept was first conceived in 2010 as a pilot project and codified in legislation in 2011. HB 3145 (2011) (Enrolled). It established "convenience zones" for each redemption center to ensure that they would be convenient for retail customers. The current version of the statute, ORS 459A.735--740, made the 2010 pilot project permanent. In it, the legislature included several statements indicating that redemption centers are supposed to be located in commercial areas, close to retailers. Take, for example, the following excerpts:

- **"To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers."** ORS 459A.735(1).
- **"The commission shall approve a redemption center if it finds the Redemption Center will provide a convenient service to persons for the return of empty beverage containers."** ORS 459A.735(3).
- **"For each beverage container redemption center, the Oregon Liquor Control Commission shall specify up to two convenience zones. The first convenience zone shall be the sector within a radius of not more than two miles around the beverage container redemption center. The second convenience zone shall be the sector beginning at the border of the first convenience zone and continuing to a radius of not more than three and one-half miles around the beverage container redemption center. The convenience zones shall be based to the greatest extent practicable upon the proposals submitted as part of the application**

for approval of the redemption center under ORS 459A.735.” ORS 459A.738(1).

These excerpts demonstrate that the objective of a redemption center is to (1) make it convenient for people to return beverage containers, (2) ensure the highest number of participating dealers by locating the Redemption Center in close proximity to those dealers, and (3) where possible, relieve grocers of having to collect bottles and cans. None of this legislative history suggests that Redemption Centers are “recycling centers,” are industrial uses, or that they should be located in industrial zones far away from grocers and customers. In fact, neither the 2011 nor current version of the statute (ORS ORS 459A.735–740) even includes the words “recycle” or “recycling.”

OBRC operates the redemption centers with these objectives at top of mind. They are located close to grocers and are designed to service the end users of a retail product, and are essentially larger versions of the bottle return facilities of grocery stores. This is why, of OBRC’s redemption centers,¹ 22 are located in commercial or mixed-use zones. **Exhibit 2.** Redemption centers employ relatively few people, the traffic generated is primarily from single-occupancy vehicle instead of truck traffic, and unlike recycling centers or transfer stations they do not receive bottles and cans collected by curbside recyclers.

In the case of this Redemption Center, which is less than 10,000 square feet in size, OBRC commissioned a traffic study demonstrating that the existing transportation system is adequate to safely handle all traffic generated by the Redemption Center.

Exhibit 3. In light of these aspects, redemption centers do not function at all like the uses identified in the City’s Industrial (“IND”) zone purpose statement:

“The Industrial District is intended to provide sites for manufacturing, distribution, industrial uses, and uses requiring processing, fabrication and storage, including outdoor storage areas, heavy equipment and other similar uses not compatible in an Office Industrial area.” BDC 20.15.10.3.

In fact, placing a Bottle Drop in the IND zone would likely conflict with the dissimilar traffic patterns of the zone, which is dominated by truck traffic, and further erode the City’s supply of industrial land. It would also be far less convenient for consumers.

Although the legislature could have defined BottleDrops as “recycling centers,” it instead chose to adopt the term “redemption center” and thereby created a new kind of land use. **Exhibit 1**, which is a letter from the chairpersons of the Oregon Senate Committee on Environment and

¹ Note that two of these redemption centers, Newport and Corvallis, are not yet open. Two of the redemption centers, Redmond and Medford, are attached to actual procession plants and are located in industrial zones for that reason. The Oregon City location is located in a combined industrial/commercial zone.

Natural Resources and the House Committee on Energy & Environment, explain that the Redemption Centers were never intended to be “recycling centers”:

“It has come to our attention that there has been confusion as to whether a Redemption Center is considered a Recycling Center under state law. The confusion is understandable: the end goal of the material collected at a Redemption Center is eventual recycling. However, the sole function of the Redemption Centers themselves is to serve as an alternative location to collect containers from consumers, refund deposits, and to forward those containers in compacted form on to other locations for recycling. As such, they are not Recycling Centers, as no recycling takes place on site.

We in the Oregon Legislature created the Redemption Center program in 2011 for the express and explicit purpose of providing a convenient alternative to grocery store collection of redeemable beverage containers under the Bottle Bill. Redemption Centers must be easily accessible to people who are purchasing and consuming beverages in the area.

We continue to believe that Redemption Centers are appropriate commercial uses that provide an important service to communities across Oregon.”

Consequently, the Redemption Center operates under an OLCC license specific to *redemption centers*, not “recycling centers” or any other use.

3. These appeals are about societal issues which affect, but are not caused by the Redemption Center.

A number of area residents, including Jesuit High School, oppose the continued operation of the Redemption Center because of a perception that it attracts homeless people, vagrants, and petty criminals. Jesuit and others have witnessed petty crime and trespassing, homelessness, and drug use in the vicinity that they attribute to the Redemption Center’s patrons. Putting aside the issue of whether the homeless do or do not have a right to be in Beaverton, OBRC understands and is sympathetic to safety concerns. However, there is no direct evidence that any of these issues are caused by OBRC’s patrons or OBRC’s presence in the neighborhood. In fact, there have been no nuisance complaints made regarding the Redemption Center since it opened.

Exhibit 4.

Even if people who cause such nuisances have also returned beverage containers at the Redemption Center, OBRC is in no way responsible for their behavior off its premises. The Redemption Center is open to everyone and the act of returning beverage containers, in and of itself, causes no nuisances nor does it attract or encourage crime. The vast majority of the Redemption Center’s patrons are Beaverton and Washington County residents. Homelessness, drug use, poverty, and vagrancy are societal problems that OBRC did nothing to create and does not encourage.

In fact, it is entirely likely that factors other than the Redemption Center influence such behavior. In considering options to address overnight camping in City bill no. 17247, the City observed that homelessness and its attendant nuisances has increased generally over the last few years:

“Over the past several years, economic and social factors have combined to present communities with a broad range of public space disorder problems. Many cities have seen a dramatic increase in the number and size of homeless camps, as well as the number of people living on sidewalks, or in vehicles parked on streets. This issue can affect livability and residents' sense of place, resulting in demands on cities to take action. Recently, the City has seen an increase in the number of complaints of camping on city streets. These complainants report an increased number of individuals camping on city streets and express concerns about public health and sanitation, safety, and aesthetics.”

While economic factors have driven up homelessness in the region, an epidemic of opioid use has significantly impacted public and semi-public spaces. For example, the attached news article explains how drug use in libraries is becoming an increasing problem. **Exhibit 5.** It would be absurd to suggest that libraries, for example, should be sequestered away from residences and schools because people use drugs inside of them. Rather, such problems require a City-wide approach.

There is simply no evidence that these broader societal problems, which have long been a part of life in larger cities but are now reaching Beaverton, are caused or directed by OBRC. Finally, there is no evidence that forcing the Redemption Center to cease operations will be a solution to these problems even as they manifest in this neighborhood. If the availability of beverage recycling facilities does draw individuals engaged in problematic behavior, moving the Redemption Center somewhere else will simply induce such individuals to congregate elsewhere. The alternative of having beverage containers returned to retailers is not desirable for at least two reasons: first, the legislature found that a centralized bottle return system will result in a greater recycling rate, and second, the Redemption Center is better equipped to monitor the activities of those using its facilities than grocery stores which have less sophisticated bottle return systems and procedures.

Finally, there are number of uses permissible within the CS zone that might appeal to people who engage petty crime and drug use, such as bars, marijuana dispensaries, and convenience stores—all of which are mostly patronized by law-abiding citizens. Depriving the CS zone of these uses is not a rational answer to the problems identified by opponents, and the City should not make a decision on the permissibility of a certain use in a certain zone, which will apply City-wide, on the conjecture that such a use might attract the wrong kind of people.

4. Response to arguments raised by Glenwood 2006, LLC.

Glenwood 2006, LLC (“Glenwood”) raised a number of arguments through its attorney, Mr. E. Michael Connors, in a letter dated May 14, 2018. Glenwood’s arguments are summarized below and each is followed by OBRC’s response.

(a) “The Director seems more interested in justifying the City’s previous and actions than taking an impartial and objective approach.”

RESPONSE: Glenwood asserts that the Director was biased and did not make the Decision based on the evidence before her. Glenwood offers no evidence to support this assertion, and neither clearly makes a due process challenge nor explains how Glenwood’s argument demonstrates that the applicable provisions of BDC 40.25.15 and 10.50 are not satisfied. For these reasons, the Council should reject Glenwood’s argument.

(b) “OBRC is not a non-profit and has substantial financial resources to pursue another location.”

RESPONSE: Glenwood offers no evidence of OBRC’s purported financial resources and in fact, Glenwood’s implication is incorrect: OBRC does not make significant profits but has made a substantial financial commitment to the Redemption Center. It owns the site; therefore, a requirement to move it would constitute a significant financial impact. Regardless, Glenwood does not explain how OBRC’s financial resources address whether or not the Redemption Center is similar to other uses allowed in the CS zone. For these reasons, the Council should reject Glenwood’s argument.

(c) Recycling Centers are allowed in an industrial zone and therefore may not be permitted in CS zone.

RESPONSE: Glenwood’s argument depends on the Council finding that the Redemption Center fits within the use category of “Salvage Yards, Recycling Centers and Solid Waste Transfer Stations” which are conditionally allowed in only one Beaverton zone, the “Industrial” (“IND”) zone. If the Council agrees with Glenwood, only that zone would allow a Redemption Center.

The BDC does not include a definition of the use category “Salvage Yards, Recycling Centers, and Solid Waste Transfer Stations,” however, a plain reading of that use category demonstrates that it contemplates something other than the 10,000 sq. ft. Redemption Center. By listing the three uses together, the City evidently considered that there are physical similarities between “salvage yards, recycling centers, and solid waste transfer stations” that justify their grouping into a single use category. The fact that this use category is a conditional use even in the IND zone reveals that these are the noisy, dusty, smelly, and often unpleasant—albeit necessary—facilities to which people bring large volumes of waste that cannot be picked up by curb-side recycling.

Glennwood neglected to discuss Footnote 1 in the BDC table 20.15.20 concerning this use category, which in fact discourages and strictly limits uses with characteristics similar to the Redemption Center. Pursuant to 20.15.25.1 (“Use Restrictions”), “ancillary showrooms and retail areas” consisting of more than 10 percent of salvage yards, recycling centers, or solid waste transfer stations require a conditional use permit, and those consisting of more than 20 percent are prohibited. The physical appearance, function, and arrangement of the Redemption Center is much like a showroom or retail area in that it is enclosed, sanitary, climate controlled, and caters to a high-volume of mostly single-occupancy vehicle trips. This use restriction provides additional evidence that, at least based on its physical appearance and layout, the Redemption Center is not the sort of use that the City intends for an IND zone.

Finally, the Director properly examined the only relevant definition in the BDC, “salvage yard,” and correctly determined that the Redemption Center does not fit that use and by extension, the other uses in that category. **Exhibit 6** at 4.

The Council should reject Glenwood’s argument for the above reasons.

(d) The Redemption Center should be defined as an industrial use.

(i) The dictionary definition of “recycle” demonstrates that the Redemption Center is a “recycling center.”

RESPONSE: Glenwood argues that the Director failed to apply the dictionary definition of “recycle” to the Redemption Center. That argument misses the point in two respects. First, Glenwood’s argument is not whether the Redemption Center conducts “recycling,” it is that it meets the definition of “recycling center,” and Glenwood fails to offer a dictionary definition of that term. Second, and more importantly, the dictionary definition of “recycle” does not determine whether the Redemption Center is similar to other uses allowed in the CS zone. For these reasons, the Council should reject Glenwood’s argument.

(ii) The Director erred by failing to consider industry definitions of “recycling center.”

RESPONSE: The Council should reject Glenwood’s argument for several reasons. First, the Director *did* characterize other facilities commonly meeting the industry definition of “recycling center” on pages 5 and 6 of Exhibit A of the Decision.

Second, a beverage container redemption center is a statutory concept and the legislature defined it as a “redemption center,” not as a “recycling center,” as explained above.

Finally, the Redemption Center is physically nothing like a “recycling center” as that term is commonly understood. It is conducted entirely indoors, is largely automated, and is intended to function as a supporting service to nearby beverage dealers. For contrasting examples, the Tualatin Valley Waste Recovery facility and the Metro South Transfer Station, both of which are “recycling centers” or “transfer stations,” include large warehouses, a

substantial number of employees, outdoor storage areas, vehicle circulation areas, and are much larger than the Redemption Center. See **Exhibits 7 and 8**. Moreover, they process a wide variety of waste – everything from wood debris, scrap metal, to car batteries, whereas the Redemption Center only accepts beverage containers. Finally, there is no waste processing actually going on at the Redemption Center – containers are simply compacted for shipment to recycling facilities.

(iii) The Director erred by failing to consider other regulatory definitions of a “redemption center.”

Glenwood argues that Metro’s definitions of “recycling drop center” and “solid waste transfer center,” and Washington County’s definition of “recycling center,” support the position that the Redemption Centers are actually recycling centers. On the contrary, definitions from these other codes do not bind the City because they govern other jurisdictions and are irrelevant to the criteria.

First, there is no evidence that these definitions were ever intended to encompass a Redemption Center, which is a relatively recent legislative concept.

Second, Washington County’s definition of recycling center could only apply to a facility or service within the City of Beaverton if that facility or service had a franchise agreement with the County, which OBRC does not because it operates through a license from the OLCC.

Finally, Metro’s definitions are not zoning or land use definitions and apply only for the purpose of regulating the disposal of solid waste disposal sites and solid waste facilities under Chapter 5 of the Metro Code. They do not apply to bottle Redemption Centers, which are expressly regulated by the OLCC and indeed, Chapter 5 does not address beverage container redemption in any way.

The Council should reject Glenwood’s argument for the above reasons.

(e) The Director erred in concluding that the Redemption Center is allowed in the CS zone because the bottle returns have been allowed in supermarkets.

RESPONSE: The Council can reject this argument because the number of containers that flow through the Redemption Centers does not demonstrate that it is an industrial use any more than the sales volume of beverages indicates that beverage dealers are wholesale uses. The intent of the Redemption Center is to accept the containers that would otherwise be returned to retailers. Moving those bottle returns into a single facility does not convert them from a retail/service use into an industrial use, and the scale of the Redemption Center is virtually the same as many other businesses permitted in the CS zone.

(f) The Director erred in concluding that the BCRC need only be “more or less similar” to another use to qualify as a similar use pursuant to BDC 40.25.15.C.4.

RESPONSE: BDC 40.25.15.C.4 provides as follows:

“When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.”

In response to this criterion, the Director provided over four pages of findings explaining why the Redemption Center is “substantially similar” to a use currently permitted in the CS zone. She interpreted that term as follows:

“The Director does not believe that the word “substantially” indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of “substantially similar” must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, “substantially” in this context means more or less,” where the focus is on the intensity of activity and the external impacts generated by the activity.”

Exhibit 6 at 7. This approach is entirely consistent with the dictionary definitions of the term “substantially” or “substantial” which are as follows:

- Oxford English Dictionary Online (“substantially”): (1) “to a great or significant extent”; (2) “for the most part; essentially.”²
- Merriam-Webster (“substantial”): (1) “consisting of relating to substance; not imaginary or illusory; important, essential”; (5) “being largely but not wholly that which is specified.”³

As these definitions demonstrate, the Director has ample linguistic support for her interpretation. Moreover, Merriam Webster’s definitions of the term “more or less” as “with small variations; approximately” support the Director’s interpretation.⁴

Glenwood’s argument attempts to cast a Director’s Interpretation as an exercise of linguistic analysis rather than a practical application of the BDC. An honest reading of the Director’s use of the term “more or less” makes it clear that the Director simply meant that the use must share a substantial number of discernable characteristics to, but not be the exact same as, other uses already permitted in the district, based on the intensity of the activity and its external impacts.

² <https://en.oxforddictionaries.com/definition/substantially>

³ <https://www.merriam-webster.com/dictionary/substantial>

⁴ <https://www.merriam-webster.com/dictionary/more%20or%20less>.

Glenwood contends that the intensity of the activity and its impacts are not relevant, but rather, implies that the relevant question is whether other businesses permitted in the CS zone are also engaged in beverage container recycling. This interpretation of the term “substantially similar” nullifies the entire point of Director’s Interpretations, which is to allow uses that are not already identified in the list of permitted uses.

Simply stated, the Director correctly interpreted and applied the term “substantially similar” and relied on substantial evidence when finding that the Redemption Center is “substantially similar” to other uses in the CS zone. For this reason, the Council should reject Glenwood’s argument.

(g) The Director erred in evaluating the physical characteristics of the Redemption Center instead of its handling of recyclables.

Glenwood challenges the Director’s conclusions that the Redemption Center is similar to many retail uses permitted in the CS zone based on traffic impacts, geographic draw, and exchange of goods and services for money. The Council can reject this argument for a two reasons, which are discussed in detail below.

As an initial matter, Glenwood’s argument that the Director erred because the bulk of her findings regarded retail uses instead of “Service Businesses and Professional Services” is meritless. The Director pointed to OBRC’s original interpretation request as evidence supporting a finding that the BottleDrop is similar to that use category. Glenwood’s argument that the Director improperly focused on retail uses is nonsensical; there is nothing in the BDC that prohibits the Director from addressing uses other than those indicated by an applicant in its initial request and at any rate, OBRC directly addressed the similarity of the Redemption Center to retail uses in its arguments submitted to the Director before the Decision was issued.

- **Contrary to Glenwood’s arguments, the Director properly considered the external physical characteristics of the Redemption Center in the Decision.**

Glenwood argues that it is the fact that recyclable materials are being handled that is determinative of the use and that the Director erred in characterizing the Redemption Center use based on its physical characteristics. This argument fails because the City’s Comprehensive Plan and BDC specifically designate uses in terms of their scale and physical characteristics. The purpose of the CS zone is to “provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City’s major streets.” BDC 20.10.10. This purpose statement is further explained by Goal 3.73 of the Beaverton Comprehensive Plan, which establishes the following policies for “Community Commercial” areas, including the CS zone:

- **“a) Allow commercial uses at a range of scales, including large-format retail, to address community needs.**

c) Prohibit land-intensive vehicle sales and service uses and uses requiring extensive outdoor storage.

d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking.” Exhibit 9.

As these policies indicate, uses appropriate for community commercial areas are determined by their scale, whether they address community needs, and their impacts (particularly those of noise, access, and parking). Thus, the Comprehensive Plan and BDC are focused on the compatibility of a given business with other businesses in the surrounding commercial area based on those business’s external factors, and clearly support the Director’s analysis.

None of the language of the Comprehensive Plan or BDC supports Glenwood’s contention that the “direction of the compensation scheme” or the fact that the material being handled is a recyclable makes a difference under the Comprehensive Plan or BDC. For these reasons, the Council should find that the Director’s analysis properly focused on the tangible external aspects of the Redemption Center (such as noise and traffic generation) and the fact that it is directly related to other commercial activities.

- **Nuisances allegedly caused by Redemption Center patrons are not intrinsic to the Redemption Center, but are local manifestations of larger societal problems.**

Glenwood completely misses the mark in arguing that the phenomena of homelessness and vagrancy, which OBRC *cannot* control, are relevant impacts to be considered while the impacts that OBRC *can* control (size, scope of the facility, parking, traffic generation, etc.) are irrelevant. By that logic, any use that might attract the homeless or drug users must be sequestered away from commercial areas. However, the vast majority of citizens using the Redemption Center, just like the vast majority of people going to places like grocery stores, minimarts, marijuana dispensaries, tattoo parlors, and fast food restaurants, are law abiding individuals who cause no harm to the surrounding neighborhood. That fact that people who *do* cause nuisances might also use these businesses does not mean that there is something intrinsically wrong with the businesses themselves such that they need to be further separated from residences and schools, and such issues are not an appropriate basis upon which to make zoning decisions.

(h) The Director incorrectly determined that the impacts of the Redemption Center are similar to other commercial uses permitted in the CS zone.

RESPONSE: Glenwood makes a number of conclusory statements that the Redemption Center is noisy and generates a lot of traffic, but does not offer any evidence or even claim that the noise and traffic caused by the Redemption Center are any *different* than other uses permitted in the CS zone. Instead, Glenwood relies on assertions of neighborhood opponents as evidence

that the Redemption Center has “changed the very character of the neighborhood.” Virtually all of the assertions in the record concern the behavior of homeless people or those under the influence of drugs or alcohol, which issues are beyond the control of OBRC.

In fact, substantial evidence in the whole record demonstrates that the Redemption Center is similar in character, operation, and impact to other uses permitted in the CS zone, and a traffic study commissioned by OBRC demonstrates that the street system surrounding the Redemption Center is adequate to safely accommodate the facility’s traffic.

(i) The Redemption Center has been operating without approval since LUBA’s 2017 decision.

RESPONSE: This argument is without merit. The City approved a Design Review for the Redemption Center in 2017. The request for the Director’s Interpretation was directly in response to LUBA’s 2017 remand of the city’s Design Review approval. The City has not initiated enforcement against the Redemption Center and even if it did, Section 2.10.020 of the City code, “Voluntary Compliance Agreements,” provides a mechanism whereby a person accused of violating a land use regulation can obtain necessary approvals. Moreover, Glenwood has not filed a complaint in circuit court to enjoin the Redemption Center’s continued operations.

5. Response to arguments raised by Jesuit High School and certain individuals.

Jesuit High School and a number of individuals (together, “Jesuit”) raised a number of arguments through its attorney, Mr. Michael Neff, in a letter dated May 11, 2018. Jesuit’s arguments are summarized below and each is followed by OBRC’s response.

(a) “This type of Bottle Drop is a recycling center under the plain language of the Beaverton Development Code.”

RESPONSE: Jesuit makes a number of related arguments that boil down to an assertion that the Redemption Center meets the “plain language” definition of a recycling center.” The Council should reject Jesuit’s argument for the same reasons explained in response to similar arguments raised by Glenwood, but also for the following reasons:

First, there is no definition of “recycling center” in the BDC, so any suggestion that the plain language of the BDC supports Jesuit’s argument is simply false.

Second, to any extent there is a common understanding of the term “recycling center,” OBRC has offered substantial evidence that such term generally denotes large facilities, with both outdoor and indoor operations and large vehicle circulation areas, which accept a wide variety of recyclable waste. Neither Jesuit nor Glenwood offers any evidence whatsoever that the term “recycling center” denotes a Redemption Center as that term was created by statute, nor do they explain how a 10,000 square foot building that accepts only bottles and cans from end-users is at all similar to the recycling center examples offered by OBRC.

Finally, Jesuit is incorrect in its statement that the term “salvage yard” is not relevant to the Decision. In fact, it is directly relevant because it is the only defined term in the BDC that sheds any light on the meaning of “Salvage Yards, Recycling Centers and Solid Waste Transfer Stations,” which is the land use that both Jesuit and Glenwood claim the Redemption Center to be.

(b) “Staff improperly used BDC ‘procedure’ to reach conclusions approving the Bottle Drop.”

RESPONSE: Jesuit argues that “proper analysis does not allow for the use ‘recycling center’ to be compared against the collection of uses allowed in the [CS] zone.” In making this argument, Jesuit completely misunderstands the criteria, which require the Redemption Center to be compared to uses permitted in the CS zone. This is exactly what the Director did on pages 3–8 of Exhibit A to the Decision. **Exhibit 6.** To the extent that the Director compared a recycling center to other uses allowed in the CS zone, she did so because opponents, including Jesuit, raised the issue below. **Exhibit 6** at 4. For these reasons, the Council should reject Jesuit’s argument.

(c) “Staff’s rejection of the BDC’s plain language is a *de facto* code amendment and should be rejected.”

RESPONSE: Jesuit’s argument is without merit. The Redemption Center is not a defined use and the BDC specifically provides that the Director’s Interpretation process is required to determine whether that use is permitted in the City, pursuant to BDC 10.50:

“Authorization for Similar Uses. The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director’s Interpretation, as provided by Section 40.25. of this Code.” (Emphasis added.)

The Council should reject Jesuit’s argument.

(d) Staff failed to identify the specific service businesses to which the Bottle Drop is “substantially similar.”

RESPONSE: The Council should reject Jesuit’s argument because it is an incorrect statement of the law and misrepresents the Director’s decision. There is no requirement in the BDC that requires the Director to identify specific businesses to which the Redemption Center is “substantially similar.” Rather, the BDC requires the Director to identify other *land uses* permitted in the CS zone. The Director found that the Redemption Center is substantially similar to at least three specific uses permitted in the CS zone: “Eating and Drinking Establishments,” “Retail Trade,” and “Service Business/Professional Services,” based on the characteristics of those uses.

(e) Staff must compare the Redemption Center to recycling centers in order to satisfy the criteria.

RESPONSE: Jesuit raises the convoluted argument that, in essence, the Director should have compared the Redemption Center use to a recycling center and made a determination of whether the Redemption Center was “substantially similar” to a recycling center. The Council should reject Jesuit’s argument because the request before the Director was to determine whether the Redemption Center was substantially similar to a use permitted in the CS zone. This zone does not permit “recycling centers” and at any rate, that use is not defined in the BDC.


(f) “Conflicts between Comprehensive Plan Policies and the Director’s Interpretation.”

RESPONSE: Jesuit claims that the Decision violates a number of Comprehensive Plan policies but largely does so with conclusory statements that fail to explain how the plain policies are relevant to establishment of the Redemption Center in an existing commercial area. Although the Comprehensive Plan may be useful for understanding the intent of the CS zone, Jesuit incorrectly assumes that the Comprehensive Plan provisions are directly *applicable* to the Decision as criteria. They are not, and Jesuit fails to identify any basis whatsoever for their applicability.

6. Conclusion

For the above reasons as well as those in the Application, Staff Report, and OBRC’s prior written testimony, the Council should deny the Appeal and affirm the Director’s Decision.

Best regards,



Garrett H. Stephenson

GST:jmh
Enclosures

cc: Mr. Douglas Grimm (*via email*) (*w/ encls.*)
Mr. John Andersen (*via email*) (*w/ encls.*)
Ms. Stephanie Marcus (*via email*) (*w/ encls.*)
Mr. Jules Bailey (*via email*) (*w/ encls.*)
Mr. Michael C. Robinson (*via email*) (*w/ encls.*)

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Enclosures

1. Letter from Sen. Michael E. Dembrow and Rep. Ken Helm regarding Redemption Centers
2. Summary of Redemption Centers' Zoning
3. Mackenzie Traffic Study
4. Email from Mark Bennet Explaining Lack of Nuisance Complaints
5. "Librarians emerge as unlikely players in battle against opioids," The Oregonian, June 1, 2018.
6. Director's Findings regarding DI2017-0003
7. Flyer regarding Tualatin Valley Waste Recovery
8. Photographs of Metro South Transfer Station
9. Beaverton Comprehensive Plan Goal 3.7.3



Senator Michael E. Dembrow
Senate District 23

April 11, 2018

To Local Planning Jurisdictions:

As chairs of the Oregon Senate and House committees that oversee the Oregon Bottle Bill and its implementation, we would like to clarify legislative intention behind the Redemption Center provisions in Oregon law.

Redemption Centers (also known as BottleDrops) were created in Oregon law in 2011, and are defined in ORS 459A.735. They are specific to the Bottle Bill, and represent an evolution of the original concept of the Bottle Bill as expressed by Governor Tom McCall in 1971. We are pleased that the Redemption Center program has been successful in increasing redemption rates, keeping litter out of our communities and natural areas, and increasing recycling in Oregon.

It has come to our attention that there has been confusion as to whether a Redemption Center is considered a Recycling Center under state law. The confusion is understandable: the end goal of the material collected at a Redemption Center is eventual recycling. However, the sole function of the Redemption Centers themselves is to serve as an alternative location to collect containers from consumers, refund

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deposits, and to forward those containers in compacted form on to other locations for recycling. As such, they are not Recycling Centers, as no recycling takes place on site.

We in the Oregon Legislature created the Redemption Center program in 2011 for the express and explicit purpose of providing a convenient alternative to grocery store collection of redeemable beverage containers under the Bottle Bill. Redemption Centers must be easily accessible to people who are purchasing and consuming beverages in the area.

We continue to believe that Redemption Centers are appropriate commercial uses that provide an important service to communities across Oregon. We look forward to, and encourage, more Redemption Centers in Oregon, and to shaping Oregon's Bottle Bill with future innovations like this to ensure that the program remains relevant, convenient, and accessible for all Oregonians.

Sincerely,



Michael Dembrow
Chair, Senate Committee on Environment and Natural Resources



Representative Ken Helm
Chair, House Committee on Energy & Environment

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Phone: (503) 986-1723 - Email: sen.michaeldembrow@state.or.us



OBRC REDEMPTION CENTERS

REDEMPTION CENTER		ZONING DESIGNATION
1	Albany 2141 Santiam Hwy S.E.	CC – Community Commercial
2	Beaverton 9307 S.W. Beaverton-Hillsdale Hwy	CS – Community Service
3	Bend 755 N.E. 2 nd Street	ME – Mixed Employment
4	Corvallis 1111-B N.W. 9 th Street	MUS – Mixed Use Community Shopping
5	Eugene 2105 W. Broadway	E-2 – Mixed Use Employment
6	Forest Grove 2933 Pacific Avenue	CC- Community Commercial
7	Grants Pass 1040 Rogue River Hwy	GC – General Commercial District
8	Gresham 1313 E. Powell Boulevard	DCL – Downtown Commercial Low-Rise
9	Hermiston 740 W. Hermiston Avenue	C-2 – Outlying Commercial
10	Klamath Falls 2702 Eberlein Avenue	GC – General Commercial
11	Medford 1179 Stowe Avenue	LI – Light Industrial
12	Milwaukie 6106 S.E. King Road	C-G – General Commercial
13	Newport 158 E. Olive Street	C-3 – Commercial Heavy
14	Ontario 1383 N.E. 3 rd Avenue	C2H – City Heavy Commercial

REDEMPTION CENTER		ZONING DESIGNATION
15	Oregon City 14214 First Street A&B	GI – General Industrial District
16	Portland Delta Park 1176 N. Hayden Meadows Drive	CG – General Commercial
17	Portland Glisan 12403 N.E. Glisan Street	CG – General Commercial
18	Redmond 1204 S.E. Lake Road	M-2 – Heavy Industrial
19	Roseburg 740 N.E. Garden Valley Boulevard	C3 – General Commercial
20	Salem Lancaster 1917 Lancaster Drive N.E.	CR – Retail Commercial
21	Salem Northeast 1880 Commercial Street N.E.	CG – General Commercial
22	Salem South 4815 Commercial Street S.E.	CR – Retail Commercial
23	Springfield 2289 Olympic Street	Major Retail Commercial
24	Tigard 14411 S.W. Pacific Hwy	CG – General Commercial
25	Wood Village 23345 N.E. Halsey Street	NC – Neighborhood Commercial

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DESIGN DRIVEN | CLIENT FOCUSED



Expires 12-31-19

EXISTING CONDITION TRAFFIC ANALYSIS

To
City of Beaverton

For
BottleDrop Oregon
Redemption Center
Beaverton, Oregon

Dated
March 20, 2018

Project Number
2170691.00



MACKENZIE
Since 1960

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- Figure 1 – Vicinity Map
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EXECUTIVE SUMMARY

This existing-condition traffic analysis has been prepared to demonstrate that the transportation network near the BottleDrop Oregon Redemption Center located at 9307 SW Beaverton-Hillsdale Highway in Beaverton, Oregon, currently operates acceptably. This analysis addresses requirements established by the City of Beaverton and the Oregon Department of Transportation (ODOT). The following are key findings supported by these analysis results for the proposed development project.

Project Description

- An approximately 9,780-square-foot bottle recycling facility has been operational at 9307 SW Beaverton-Hillsdale Highway in Beaverton.
- The site is approximately 0.88 acres and is currently zoned Commercial (CC).
- The site has two accesses on SW Beaverton-Hillsdale Highway spaced approximately 65 feet apart, as measured between the nearest edge of driveways.

Existing Conditions

- Roadways near the site include SW Beaverton-Hillsdale Highway (OR-10), SW 91st Avenue, and SW Jamieson Road.
- The sidewalk network is complete in the study area, with only SW 91st Avenue missing sidewalks north of SW Beaverton-Hillsdale Highway.
- There are no clearly marked bike lanes on any of the study area roadways.
- The study area is served by TriMet Bus Line 54 on SW Beaverton-Hillsdale Highway (OR-10), with westbound and eastbound stops at SW 91st Avenue and SW Jamieson Road.
- Existing intersection turning movement and driveway counts were collected for two (2) days.
- Review of historical crash data did not show crash rates or patterns that warrant further investigation or mitigation.
- All study area intersections currently operate within the City's and ODOT's mobility standards during the PM peak hour.
- Existing queues are adequately served by existing storage lengths during the PM peak hour.

Site Access and Circulation

- The site has access to SW Beaverton-Hillsdale Highway via two (2) full-movement driveways spaced approximately 65 feet apart, as measured between the nearest edge of driveways.
- Although the site driveways are offset from the entrance to the shopping center across the street, the potential for conflicting movements is low.

Warrants

- Driveway volumes were combined to conduct the warrant analyses.
- Signalization is not warranted at any site access, based on existing 2018 traffic volumes.

- Left turns into the site are currently accommodated by the two-way left-turn lane (TWLTL) on SW Beaverton-Hillsdale Highway.
- Right-turn lanes into the site are not warranted at either site access location.

Conclusions

- The transportation system near the BottleDrop Oregon Redemption Center on SW Beaverton-Hillsdale Highway operates acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity.

I. INTRODUCTION

This existing condition traffic analysis has been prepared to demonstrate that the transportation network near the BottleDrop Oregon Redemption Center in Beaverton, Oregon, currently operates acceptably. Figure 1 in Appendix A presents a vicinity map indicating the project location.

Project Description

The existing BottleDrop facility is approximately 9,780 square feet (SF) and is located on the north side of SW Beaverton-Hillsdale Highway between SW Jamieson Road and SW 91st Avenue. BottleDrop allows customers to redeem their bottle deposit on qualifying plastic, metal, or glass bottles by simply returning the items to a BottleDrop location. The facility is open between 8:00 AM and 6:00 PM every day, and the Green Bag drop door is available between 7:00 AM and 10:00 PM.

Access to the site is provided on SW Beaverton-Hillsdale Highway (OR-10) via two (2) full-movement driveways. The driveways are spaced approximately 100 feet apart, as measured centerline-to-centerline and approximately 65 feet apart, as measured between the nearest edge of driveways.

Scope of Analysis

This analysis is consistent with the City's Development Code, Section 60.55.20 and the Oregon Department of Transportation's (ODOT's) *Analysis Procedures Manual* (APM). This study includes a summary of existing traffic conditions, crash review, and an analysis of intersection operations, sight distance, queuing, and signal and turn-lane warrants.

Study Area

The City's Development Code, Section 60.55.10, requires that the study area include all points of access onto the public street system, all intersections of regional significance within 1,000 linear feet from all points of access onto the public street system, and all intersections where the traffic generated by the development exceeds 5% of existing AM or PM peak-hour total intersection traffic volumes.

Based on these criteria, the following intersections were included in this analysis' study area:

- SW Beaverton-Hillsdale Highway/SW Western Avenue
- SW Beaverton-Hillsdale Highway/SW Jamieson Road
- SW Beaverton-Hillsdale Highway/West Driveway
- SW Beaverton-Hillsdale Highway/East Driveway
- SW Beaverton-Hillsdale/SW 91st Avenue

All intersections in the study area are located within the City of Beaverton. SW Beaverton-Hillsdale Highway (OR-10) is an ODOT facility.

Analysis Scenarios

Because the BottleDrop facility is currently operating, only 2018 existing conditions were evaluated in this analysis.

II. EXISTING CONDITIONS

The existing conditions analysis is based on a current year 2018 inventory of transportation facilities and 2017 and 2018 traffic data.

Site Conditions

The project site is located at 9307 SW Beaverton-Hillsdale Highway in Beaverton, Oregon within the Portland Urban Growth Boundary (UGB). The site is approximately 0.88 acres and comprises a single tax lot, 1S114AB04100.

Access to the site is provided via two (2) full-movement driveways on SW Beaverton-Hillsdale Highway. A two-way left-turn lane (TWLTL) is provided on SW Beaverton-Hillsdale Highway to facilitate left turns from the west.

Vehicular Transportation Facilities

Figure 2 presents existing lane configurations and traffic control devices for the study area intersections. Table 1 below summarizes roadway characteristics within the study area.

TABLE 1 – ROADWAY CHARACTERISTICS							
Roadway	Jurisdiction	Functional Classification	Posted Speed (mph)	Travel Lanes	Bike Lanes	On-Street Parking	Sidewalks
SW Beaverton-Hillsdale Highway (OR-10)	ODOT	District Highway Arterial	35	5	No	No	Yes
SW 91st Avenue	City of Beaverton	Neighborhood Route	30	2/3	Partial	No	Partial
SW Jamieson Road	City of Beaverton	Collector	25	2/3	No	Yes	Yes
SW Western Avenue	City of Beaverton	Arterial	35	4/5	No	No	Yes

Pedestrian and Bicycle Facilities

Sidewalks are provided on all the study-area roadways with some gaps in residential areas along the side streets.

No clearly marked bicycle lanes are provided on any roadway, except a portion of SW 91st Avenue north of SW Beaverton-Hillsdale Highway.

Transit Facilities

The study area is served by TriMet Bus Line 54, with westbound and eastbound stops at SW Jamieson Road and SW 91st Avenue. TriMet Bus Line 54 service is provided weekdays, Saturdays, and Sundays between Portland City Center and the Beaverton Transit Center. Headways during peak hours are about 20 minutes on weekdays, 30 minutes on Saturdays, and 30 minutes on Sundays.

The route map and bus schedules for TriMet Bus Line 54 are provided in Appendix B.

Existing Traffic Counts

Turning movement counts were conducted Wednesday, January 17, 2018, and Thursday, January 18, 2018, during the PM peak hour. Driveway counts were conducted on Wednesday, November 8, 2017, and Thursday, November 16, 2017, during the PM peak hour. As required by the City, an average of the two days of intersection and driveway count data was utilized in the analysis.

Figure 3 presents the averaged existing PM peak hour traffic volumes. Raw traffic count summaries are provided in Appendix C.

Note that the site driveway volumes are less than 2% of the volumes at nearby public street intersections.

Crash Analysis

Historical crash data reported for the study area intersections were evaluated for safety. Crash data for the five-year period of 2011 through 2015 were obtained from ODOT's online crash data system, and used to review crash patterns and estimate a crash rate at each location.

The crash evaluation is summarized in Table 2. The raw crash data are provided in Appendix D.

TABLE 2 – INTERSECTION CRASH RATES									
Intersection (ODOT Traffic Control Type)	Year					Total Crashes	ADT	Crash Rate	90th Percentile Rate
	2011	2012	2013	2014	2015				
SW Beaverton-Hillsdale Highway/ SW Western Avenue (3SG)	8	6	3	5	9	31	33,670	0.50	0.509
SW Beaverton-Hillsdale Highway/ SW Jamieson Road (3SG)	2	3	2	5	2	14	29,560	0.26	0.509
SW Beaverton-Hillsdale Highway/ SW 91st Avenue (4SG)	6	7	3	1	4	21	29,480	0.39	0.860

Crash Data Summary

Sixty-six (66) crashes were reported at the three study-area intersections during the five-year analysis period. None were fatal and only one crash resulted in an incapacitating (serious/major) injury. No pedestrian or bicycle crashes occurred at the study area intersections.

Thirty-one (31) crashes were reported at SW Western Avenue, with most crashes reported as rear-end collisions, predominantly in the eastbound direction. One Injury A-type (incapacitating) crash was reported at this intersection in 2011. This crash was reportedly caused by a driver attempting a westbound left turn without the right of way and striking an eastbound motorcycle. All other injuries at this intersection were classified as Injury C (possible injury – minor). This intersection now operates with

protected-permissive phasing for the westbound left-turn movement; however, the flashing yellow arrow is programmed based on the opposing volume so that permissive left turns are only allowed when lower opposing volumes are present and some gaps in traffic may be available. Some geometric improvements to eliminate the yield movements at to this intersection were constructed in 2015. These changes are not reflected in the crash statistics.

Fourteen (14) crashes were reported at SW Jamieson Road, with most crashes reported as rear-end collisions, predominantly in the eastbound direction. Two Injury B-type (non-incapacitating/moderate) crashes were reported at this location in 2012 and 2014. The 2012 crash was reportedly caused by a driver following another vehicle too closely westbound on SW Beaverton-Hillsdale Highway. The 2014 crash was reportedly caused by a driver attempting a westbound left turn without the right of way and striking an eastbound vehicle. Protected-permissive phasing for the westbound left-turn movement is programmed as described for SW Western Avenue.

Twenty-one (21) crashes were reported at SW 91st Avenue, with most crashes reported as rear-end collisions or turning movement collisions. Three Injury B-type crashes were reported at this location in 2011 and 2012. One crash in 2011 was reportedly caused by a driver attempting an eastbound left turn without the right of way and striking a westbound vehicle. The second Injury B-type crash in 2011 was reportedly caused by a westbound traveling driver disregarding the traffic signal and striking a driver attempting an eastbound left turn. The Injury B crash in 2012 was reportedly caused by a driver attempting an eastbound left turn without the right of way and striking a westbound-traveling vehicle and a stopped vehicle on the north leg of the intersection. Protected-permissive phasing for the left-turn movements is programmed as described for SW Western Avenue.

Two crashes in the five-year analysis period were associated with the site driveways but the site was occupied by a different tenant (Pier 1 Imports) when they were reported. One crash in 2014 was reported as a southbound left-turning vehicle from the west driveway collided with a stopped vehicle in the westbound travel lanes. No injuries were reported. The other crash in 2013 was reported as a southbound left-turning vehicle from the east driveway collided with a westbound through-vehicle.

Five crashes in the five-year analysis period were associated with the driveway for the Valley Plaza Shopping Center across the street from the site. Four of the crashes involved a vehicle making a left turn as it exited the Valley Plaza parking lot, and one was a vehicle making a left turn entering the parking lot. None of these crashes were related to vehicles entering or exiting the driveways across the street.

Although no bicycle crashes were reported at the signal, two bike crashes occurred in the corridor. One “right-hook” collision was reported just west of SW Jamieson Road as a westbound motor vehicle turned right into a driveway. The other collision was reported just west of SW 91st Avenue as an eastbound vehicle made a left turn and hit a westbound bicyclist. Both resulted in moderate injuries to the bicyclist.

ODOT Safety Priority Index System Review

ODOT’s 2016 Safety Priority Index System (SPIS) was reviewed to determine if any streets in the study area network were identified in ODOT’s worst 10% of all public roads. The 2016 SPIS list compiles data for crashes occurring between 2013 and 2015. No segment of SW Beaverton-Hillsdale Highway (OR-10) is currently identified in the worst 10% of all public roads. However, SW Beaverton-Hillsdale Highway (OR-10) is identified in the worst 15% between approximately 280 feet west of SW Western Avenue and approximately 155 feet east of SW Western Avenue (mile point 1.45 to mile point 1.53). No fatalities were reported on this segment of SE Beaverton-Hillsdale Highway (OR-10).

Washington County Safety Priority Index System Review

Washington County's 2010-2012 SPIS (latest available) was reviewed to determine if any intersections in the study area network were identified in Washington County's worst 10% of all public roads. No study-area intersections are currently identified in the worst 10% in the County. The SW Beaverton-Hillsdale Highway (OR-10)/SW 91st Avenue intersection was listed 97th in the list with a SPIS score of 51.4. No fatalities were reported between 2010 and 2012.

Intersection Crash Rates

Intersection crash rates were calculated as a measure of the number of crashes occurring per one million entering vehicles (MEV) per year. The intersection crash rate is calculated by dividing the average number of crashes per MEV per year. An average daily traffic (ADT) volume was estimated by dividing the PM peak hour volume at each intersection by a peak-to-daily, or k-factor, of 0.09, derived from a comparison of the existing traffic counts and ODOT's 2016 ADT volumes on SW Beaverton-Hillsdale Highway.

All study-area intersections were found to have a crash rate below the 90th percentile crash rates. Therefore, no further analysis is required.

Findings

Based on the review of historical crash data in the study area, crash patterns are consistent with the geometry and traffic control in the study area and none of the intersections have SPIS values or crash rates in the worst 10%.

III. SITE ACCESS AND CIRCULATION

The on-site evaluation of traffic access and circulation and a review of sight distance at the existing site driveways are presented below.

Site Access

The BottleDrop Oregon Redemption Center has two full-movement driveways on SW Beaverton-Hillsdale Highway (OR-10).

Access Spacing

The City's access spacing standards are presented in Section 210.13.C of the City's *Engineering Design Manual and Standard Drawings* document. The access spacing evaluation for the site's driveways is summarized in Table 3.

TABLE 3 – ACCESS SPACING SUMMARY							
Access	Roadway	Functional Classification	Design Speed (mph) ¹	Measured (feet) ²		Standard (feet)	Standard Met?
				To N/W	To S/E		
West	SW Beaverton-Hillsdale Highway	Primary Arterial	40	35	65	200	No
East				65	30		No

Notes:

1. Design speed for City standard assumed as posted speed plus 5 mph.
2. Spacing is measured on same side of street between face of curbs of driveways and/or intersections for the City standard.

The existing driveways on SW Beaverton-Hillsdale Highway do not meet the City's access-spacing standards for a 40-mph design speed Arterial. However, the driveways are existing and are not proposed to be modified in any way.

Since SW Beaverton-Hillsdale Highway is also an ODOT facility, the Oregon Highway Plan (OHP) access-spacing standards were also reviewed. Table 16 of the OHP has a spacing standard of 350 feet for a district highway in an urban area with a posted speed of 35 mph. As noted above, no changes to the site driveways are proposed.

Potential Access Conflicts

The two BottleDrop driveways are slightly offset from a 50-foot driveway serving the Valley Plaza Shopping Center on the south side of SW Beaverton-Hillsdale Highway. Often, offset driveways can create a potential for conflicts in the center lane between vehicles turning left into driveways on opposite sides of the street.

The east driveway for the BottleDrop site and Valley Plaza driveway are offset in the direction that can create potential conflict in the center lane. However, the distance is small enough (about 20 feet between driveway centerlines) that the opposing left turn movements can be completed simultaneously without conflict. During a site visit, two vehicles were observed making this movement with adequate clearance.

The west driveway for the BottleDrop site is not offset in the direction for conflict. The traffic counts show that more than 85% of the traffic turning left into the BottleDrop site uses the west driveway.

On-Site Circulation

Access to the site is provided on SW Beaverton-Hillsdale Highway via the two existing driveways. Customer parking is located immediately north of the driveways. A drive aisle connects both driveways in a U-shape. Truck loading is located on the east side of the existing building.

Sight Distance Evaluation

Intersection sight distance was evaluated at the existing site driveway locations. The American Association of State Highway and Transportation Officials' (AASHTO) *A Policy on Geometric Design of Highways and Streets*, 2011 Edition, provides recommendations for intersection sight distance (ISD) based on roadway design speed. At minimum, stopping sight distance (SSD) must be provided.

A base time gap of 7.5 seconds was assumed for passenger vehicles completing a left turn from stop. An additional 0.5 seconds per lane was added to the calculation for the additional two (2) travel lanes to be crossed on SW Beaverton-Hillsdale Highway. SW Beaverton-Hillsdale Highway is relatively flat. Therefore, no grade adjustment was applied to the SSD calculation.

The design speed on SW Beaverton-Hillsdale Highway was assumed to be 5 mph over the posted speed as a conservative measure. The recommendation for ISD has been noted for left turns from stop on a stop-controlled minor approach (driveway). All sight distance measurements were taken to the center of the nearest opposing travel lane. The sight distance evaluation for the site driveways is presented in Table 4.

TABLE 4 – SIGHT DISTANCE EVALUATION						
Access	Design Speed (mph)	Design Vehicle	Recommended ISD (feet)	Required SSD (feet)	Available Sight Distance (feet)	
					To N/W	To S/E
West Driveway	40	Passenger	500	305	600	700
East Driveway					700	800

As presented in Table 4, adequate sight distance is available at both site driveways. No trees or other permanent obstructions are located within the sight triangles along the roadway.

IV. OPERATIONS ANALYSIS

Two aspects of operational analysis were evaluated for the study area intersections: 1) intersection operations analysis, which evaluates how well an intersection processes traffic demand, and 2) queuing analysis, which compares intersection queues with available storage for different travel lanes.

Intersection Operations Analysis

Intersection operations are generally measured by three mobility standards: volume-to-capacity (v/c) ratio, level-of-service (LOS), and delay (measured in seconds). Signalized and all-way stop-controlled (AWSC) intersections are measured by one overall v/c ratio, LOS, and delay. Two-way stop-controlled (TWSC) intersections are typically measured by a single v/c ratio, LOS, and delay representative of the worst stopped movement.

Performance Measures

All study-area intersections are located within City of Beaverton jurisdiction, but SW Beaverton-Hillsdale Highway (OR-10) is under ODOT jurisdiction.

City of Beaverton

Beaverton Development Code, Section 60.55.10.7 requires the following mobility standards for intersections within City jurisdiction:

- Average control delay of no greater than 65 seconds per vehicle for signalized intersections.
- Volume-to-capacity (v/c) ratio of no greater than 0.98 for each lane group at signalized intersections.
- Average control delay of no greater than 45 seconds per vehicle for unsignalized intersections.

ODOT

Table 7 of the *Oregon Highway Plan* (OHP) designates a 0.99 v/c mobility target for corridors within the Portland Metropolitan Region. SW Beaverton-Hillsdale Highway (OR-10) is designated as a corridor, as it is located outside of the Beaverton Downtown Regional Center.

Methodology

Intersection operations were analyzed with the use of Synchro 9 software, which utilizes the Transportation Research Board's (TRB) *Highway Capacity Manual* (HCM) 2000 and 2010 methodologies. All study area intersections were reported using HCM 2000 outputs as required by the City's Development Code, Section 60.55.10.7. Signal timing information was obtained from City staff and is provided in Appendix E for reference.

Findings

Intersection operations results for all movements during the PM peak hour are provided in Table 5. Synchro output sheets are provided in Appendix F.

TABLE 5 – PM PEAK HOUR INTERSECTION OPERATIONS		
Intersection (Control)	Intersection/ Approach/ Movement	2018 Existing Analysis Results
SW Beaverton-Hillsdale Highway/ SW Western Avenue (Signalized)	Intersection	0.81-C-29.3
	EBT+R	0.82-C-31.7
	WBL	0.81-E-62.1
	WBT	0.46-A-7.9
	NBL	0.81-E-59.9
	NBR	0.19-D-40.4
SW Beaverton-Hillsdale Highway/ SW Jamieson Road (Signalized)	Intersection	0.60-B-11.4
	EBL	0.12-B-12.8
	EBT+R	0.59-B-12.2
	WBL	0.34-A-5.3
	WBT+R	0.56-A-5.5
	NBL	0.69-D-41.8
SW Beaverton-Hillsdale Highway/ West Driveway (Unsignalized)	NBR	0.06-C-31.6
	Intersection	0.03-B-11.0
SW Beaverton-Hillsdale Highway/ East Driveway (Unsignalized)	EBL	0.04-B-11.1
	SB	0.00-B-10.8
SW Beaverton-Hillsdale Highway/ SW 91st Avenue (Signalized)	EBL	0.01-B-13.3
	SB	0.68-B-16.1
	Intersection	0.46-C-23.3
	EBL	0.46-A-5.9
	EBT+R	0.02-A-7.7
	WBL	0.67-B-14.9
	WBT+R	0.05-C-29.0
	NBL	0.03-C-28.8
	NBT+R	0.80-D-50.1
	SBL	0.17-C-29.8
	SBT+R	

The operations analysis shows that all intersections currently meet City and ODOT standards. Therefore, the existing BottleDrop is not adversely affecting the study area intersections during the PM peak hour.

Intersection Queuing Analysis

An intersection queuing analysis was conducted for the study area intersections during the PM peak hour to evaluate any potential queue spillbacks. The 95th percentile queues were estimated using SimTraffic

software. Queue demand results were rounded to the nearest 25 feet to represent average vehicle lengths.

Methodology

Available queue storage lengths were estimated using Google Earth Pro software and rounded to the nearest 5 feet. For turn lanes, two available storage values are stated: the first represents the striped storage; the second is effective storage, or the length physically available regardless of striping, such as a center-turn lane upstream of a striped left-turn lane at an intersection. Although travel lanes have no storage limits defined by striping, two values are reported for storage: the first is the distance to an upstream driveway; the second is the distance to an upstream public street intersection.

Findings

The PM peak hour 95th percentile queues are presented in Table 6. SimTraffic output sheets are provided in Appendix G.

TABLE 6 – PM PEAK HOUR 95TH PERCENTILE QUEUING ANALYSIS			
Intersection (Control)	Approach/ Movement	Striped/Effective Storage (feet)	2018 Existing Queue (feet)
SW Beaverton-Hillsdale Highway/ SW Western Avenue (Signalized)	EBT	350/920	600
	EBT+R	350/920	650
	WBL	195/340	300
	WBT	135/490	350
	NBL	270/930	350
	NBR	270/930	150
SW Beaverton-Hillsdale Highway/ SW Jamieson Road (Signalized)	EBL	95/165	50
	EBT	170/615	350
	EBT+R	170/615	375
	WBL	150/365	125
	WBT	110/830	200
	WBT+R	110/830	200
	NBL	150/295	225
	NBR	150/295	100
SW Beaverton-Hillsdale Highway/ West Driveway (Unsignalized)	EBL	35/165	50
	SB	25	50

TABLE 6 – PM PEAK HOUR 95TH PERCENTILE QUEUING ANALYSIS			
Intersection (Control)	Approach/ Movement	Striped/Effective Storage (feet)	2018 Existing Queue (feet)
SW Beaverton-Hillsdale Highway/ East Driveway (Unsignalized)	EBL	60/130	25
	SB	25	25
SW Beaverton-Hillsdale Highway/ SW 91st Avenue (Signalized)	EBL	140/190	150
	EBT	285/835	200
	EBT+R	285/835	225
	WBL	140/175	50
	WBT	80/670	350
	WBT+R	80/670	300
	NBL	25/50	25
	NBT+R	145/600	25
	SBL	90/230	275
	SBT+R	90/150	225

As presented in Table 6, existing queues are mostly adequately served by existing storage areas.

The southbound left-turn and shared through-right lanes at the SW Beaverton-Hillsdale Highway/SW 91st Avenue intersection currently experience queuing beyond their available striping. Per the modeling results, the through-right shared lane experiences queues extending to SW Club Meadow Lane and the southbound left lane experiences queues just past SW Club Meadow Lane. This means vehicles waiting to turn right onto SW Beaverton-Hillsdale Highway are trapped in the queue behind vehicles waiting to travel through or left, and vice versa.

The existing queuing is typical on a minor roadway of a signalized intersection and traffic does not currently affect any major cross streets along SW 91st Avenue. Therefore, no mitigation is recommended to reduce queues on this approach.

V. WARRANTS

Traffic signal and turn-lane warrants were reviewed using 2018 existing volumes for the PM peak hour. The analysis summary for signal, left- and right-turn lane warrants is presented below.

Traffic Signal

The *Manual on Uniform Traffic Control Devices* (MUTCD), 2009 Edition, provides guidance and standards on the study of traffic conditions to determine the need for signalization at unsignalized intersections. Signal warrants were conducted for the driveway locations on SW Beaverton-Hillsdale Highway. Appendix H provides the signal warrant documentation for the site driveways during the PM peak hour.

No signal is proposed at either site driveway. Even when the driveway volumes are combined, the driveways do not meet the minimum volume thresholds for signalization for the eight-hour (75 vehicles), four-hour (80 vehicles), or peak hour (100 vehicles) warrants. Therefore, no further analysis is required.

Turn Lanes

Turn-lane warrants were reviewed for the site driveways using the Texas Transportation Institute's (TTI) left-turn lane and right-turn lane warrant criteria for an unsignalized intersection. Appendix I provides reference material supporting the turn-lane warrants.

SW Beaverton-Hillsdale Highway is a five-lane roadway including a center TWLTL. The TWLTL accommodates left-turns into the site from the west. Therefore, only the need for a right-turn lane was reviewed. Again, both driveway volumes were combined to evaluate the right-turn lane warrant. Existing 2018 traffic volumes do not warrant a right-turn lane at the site access due to low right-turn volumes of only 13 vehicles in the PM peak hour.

Summary

Table 7 below summarizes the warrant analyses results for the combined driveway location.

TABLE 7 – WARRANT ANALYSIS			
Access	AM Peak Hour		
	Signal	Left-turn	Right-turn
Site Access	No	N/A	No

As presented in Table 7, no signals or turn lanes are warranted at the site access. Because no signal or right-turn lane was warranted using the combined driveway volumes, neither are warranted at each individual driveway. Therefore, no improvements at the site driveways are proposed.

VI. CONCLUSIONS

The transportation system near the BottleDrop Oregon Redemption Center on SW Beaverton-Hillsdale Highway operates acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity.

VII. APPENDIX

Appendix A. Figures

Appendix B. Transit Information

Appendix C. Traffic Count Summaries

Appendix D. Crash Data

Appendix E. Signal Timing

Appendix F. Operations Calculations

Appendix G. Queuing Analysis

Appendix H. Signal Warrants

Appendix I. Turn Lane Warrants

APPENDIX A
FIGURES



Portland 503.224.9560
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 Seattle 206.749.9993
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Architecture - Interiors
 Planning - Engineering

MACKENZIE

DATE: 1.29.2018

DRAWN BY: JTJ

CHECKED BY: JED

JOB NO:
 2170691.00

VICINITY MAP

BEAVERTON BOTTLEDROP CENTER
 BEAVERTON, OREGON

FIGURE

1
 124

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Hicks, Jane M.

From: Safley, K. C.
Sent: Thursday, June 7, 2018 3:14 PM
To: Stephenson, Garrett H.; Robinson, Michael C.
Subject: FW: Beaverton OBRC facility

Mike and Garrett,

Mark Bennett, code compliance officer for City of Beaverton, says that he has received no complaints concerning the OBRC facility.

Thank you,,

K.C. Safley
Schwabe Williamson & Wyatt
Attorney
Direct: 503-796-2955
Mobile: 503-789-6350
ksafley@schwabe.com

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www.schwabe.com

From: Mark Bennett
Sent: Thursday, June 07, 2018 3:09 PM
To: Safley, K. C.
Subject: FW: Beaverton OBRC facility

From: Mark Bennett
Sent: Thursday, June 07, 2018 12:57 PM
To: Mailbox BPD Code Services <mailboxbpdcodeserv@beavertonoregon.gov>
Subject: RE: Beaverton OBRC facility

I have not received any complaints of City Code violations concerning this facility.

Mark Bennett
Code Services
Beaverton Police Department

From: Mailbox BPD Code Services
Sent: Thursday, June 07, 2018 11:51 AM
To: Mark Bennett <MBennett@beavertonoregon.gov>
Subject: FW: Beaverton OBRC facility

Problem #57964

From: Safley, K. C. [mailto:KSafley@SCHWABE.com]
Sent: Wednesday, June 06, 2018 10:16 AM
To: Mailbox BPD Code Services <mailboxbpdcodeserv@beavertonoregon.gov>
Subject: Beaverton OBRC facility

Hello,

Can you please let me know if there have been any recent complaints filed related to the OBRC facility on Beaverton-Hillsdale Highway. This is the new bottle redemption facility that is located near Jesuit High School.

Please let me know at your earliest convenience.

Thank you,

K.C. Safley
Schwabe Williamson & Wyatt
Attorney
Direct: 503-796-2955
Mobile: 503-789-6350
ksafley@schwabe.com

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OREGONIAN
4/2/18

DRUG OVERDOSES

Opioid crisis felt even in the libraries

Opioid overdose-reversing drug on
hand at five Multnomah County sites

Abby Lynes *The Oregonian/OregonLive*

Donna Cain was doing her rounds in the Belmont Public Library one night in early April when it happened.

The library research assistant knocked on a locked bathroom door, following protocol, and called out, "Library staff, the library is closing."

No response.
"She has a soft voice, so she tried again, speaking louder this time."

Still nothing.
That's when she knew something was wrong. She raced to the library's front desk to grab the bathroom key and then came back and unlocked the door to find a man on his knees, bent over on the floor. A needle lay beside him.

Cain called 911 from her library-issued cellphone and kept speaking to the gently snoring man, trying to talk him out of his stupor, to no avail.

It seemed like it took forever for emergency services to arrive, she said — time tends to pass slowly in emergencies. It was really only about five minutes, though, before the paramedics got to the library and could revive the man.

This scene is all too common, as librarians across the country have become unexpected soldiers in the battle against the opioid crisis. While opioid overdoses aren't as common at Portland libraries — happening at a rate

SEE OPIOIDS, A7

OPIOIDS

FROM A1

of about one suspected overdose per year — they are beginning to happen more frequently.

This month, the Multnomah County Library system is rolling out naloxone, in the form of nasal spray, at five of its locations — Belmont, Central, Holgate, Hollywood and Midland. They are also training staff how to administer the opioid overdose-reversing drug so they will know what to do in case they have less time than Cain did to save someone's life.

In the current system for dealing with overdoses, there is one person who acts as a point of contact at each library branch. They know what to look for, often checking the bathrooms for people lingering. There's a rule against sleeping in the library, because it can be hard to tell if someone's napping or unconscious. If library personnel can't wake someone up, they know what they have to do.

Up until now, they have depended on paramedics to respond to drug overdoses. Most overdoses have been concentrated in Central Library, by far Portland's most-frequented library. Emergency service response times are generally pretty fast downtown, said Dave Ratliff, the county's neighborhood libraries director who worked at Central for 14 years.

But the opioid epidemic has spread, increasingly affecting vulnerable populations across the area.

There have been three suspected overdoses at Multnomah County libraries since February 2017. And response times throughout the county vary, Ratliff said. Sometimes it takes paramedics longer to get to libraries farther away from the city's center.

"If someone's not breathing, three or four minutes makes a big difference," he said.

Maintenance crews and librarians regularly find needles lying in the grass and on sidewalks surrounding libraries, Director of Libraries Vailey Oehlke said. To help people dispose of syringes more safely, the library has installed sharps containers in most bathrooms.

Drug use is prohibited in libraries, but staff can't always control if people use drugs outside, where people sometimes sit or sleep for the night.

Libraries are one of the most public places in every city, making them appealing to homeless and addicted people looking for warmth and shelter.

"What happens in our community happens in our buildings," Oehlke said.

Libraries' fundamental job in any com-



munity is to ensure equal access to information for all, but often, securing that access requires more than just stocking bookshelves and preparing for children's story hour.

So many serious issues affecting the community walk into library doors each day that Multnomah County has joined other larger cities in hiring social workers to help visitors of Central Library access a wide array of resources.

Oehlke said that in one social worker's first year, she saw more than 1,100 people, helping them with everything from mental health access to getting new pairs of shoes.

And while Portland libraries naturally have more overdoses because of the city's higher population, opioid overdoses have also hit rural counties hard.

Library directors in two counties in Oregon with high rates of opioid overdose deaths — Lincoln and Clatsop Counties — said they were happy enough with ambulance response times in their smaller cities that they didn't feel like they need naloxone on site.

Jackson County Library staff members, however, have started to discuss possibly purchasing naloxone for librarians to use, assistant director Laura Kimberly said. The library has had three suspected overdoses in

the past five years, she said, but she feels like drug use has escalated.

"You can definitely tell there's been a change in the last few years," Kimberly said.

Oregon isn't the only state having this conversation. Librarians across the country are constantly debating about which services libraries should provide. The American Libraries Association writes on its website that "it is crucial that libraries recognize their role in enabling poor people to participate fully in a democratic society."

But how far should libraries go? Should administering naloxone be part of a librarian's job description?

"It's a perfect example of how time and time again, the government turns to libraries to step up and fill in," Jeremy Johannesen, executive director of the New York Library Association, told the New York Times in February. He pointed out that libraries distributed tax forms and had assisted with enrollment for the Affordable Care Act.

Salt Lake County (Utah) Library recently started distributing free naloxone kits on site, and cities such as Denver and San Francisco are also training librarians how to use the drug. Last fall, a representative from New York even introduced the Life-saving Librarians Act to Congress, a bill that would help make naloxone kits more

affordable for libraries.

Oehlke said she understood other libraries have different needs and resources, and sometimes it might not make sense to keep naloxone on site. For Multnomah County, though, she said the opioid epidemic was a problem serious enough that it's everyone's job to step in and help where they can.

"We're not afraid of this conversation," she said. "This is our reality."

Ratliff said he figured that if people were going to overdose somewhere, he's glad it's where someone could help them.

After thinking about her experience that day in early April, Cain said she was glad the library would make naloxone available to managers. If she had found someone closer to death, she might not have been able to get them help in time.

Still, she thinks back to when she first started working for Multnomah County Library 26 years ago, and how different her perception of the job was.

When most librarians start their careers, they don't picture themselves standing in a bathroom doorway, talking to an unconscious man having an overdose. But many find themselves there.

"None of us in library work, when we got started, signed up for this kind of thing," Cain said.

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
DI2017-0003 OBRC-BCRC**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications. The applicant responds to these criteria in the document prepared by Michael Robinson, dated December 21, 2017, titled Narrative in Support of the Request filed by Oregon Beverage Recycling Cooperative (OBRC).

These approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant has requested that the Director interpret the Beaverton Development Code in writing. Staff finds the Director's Interpretation (DI) application to be consistent with threshold number one.

Therefore, the Director finds that the proposal meets the criterion for approval.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The applicant has paid the fee associated with the Director's Interpretation Application.

Therefore, the Director finds that the proposal meets the criterion for approval.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.

The Applicant has identified several applicable Comprehensive Plan policies (Exhibit 2.1), and states that there are no conflicts with these policies. The Director has identified the following applicable Comprehensive Plan policies for discussion:

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses. Allow commercial uses at a range of scales, including large-format retail, to address community needs.

This policy specifies that the purpose of the Community Commercial Land Use designation, within which the BCRC is located, is to accommodate a wide variety of uses at a range of scales, including large-scale retail and convenient drop-off of redeemable beverage containers.

Goal 8.8.1: Reduce the amount of solid waste generated per capita.

a) The City shall support efforts to reduce the amount of solid waste generated from household, industrial, and commercial uses through source reduction and recycling activities, pursuant to Municipal Code requirements.

The applicant states that the requested interpretation is consistent with this policy because the BCRC collects and removes beverage containers from the waste stream. The Director concurs and notes that the BCRC additionally has the explicit purpose of making bottle redemption and recycling pursuant to state law more accessible and convenient for city residents. Allowing recycling/redemption centers in areas that easily serve the population encourages redemption and recycling. Ultimately, the BCRC model may lead to an increase in the amount of beverage containers that are diverted from landfills. Recent data (<http://www.bottlebill.org/legislation/usa/oregon.htm>) shows that a greater proportion of redeemable beverage containers have been returned statewide since BCRC facilities have been operating; 64.3% in 2016, and 82% in 2017. This increase is at least partially attributable to an increase in the deposit/refund but may also be due to the increased convenience for BCRC patrons compared to the previous dispersed model.

Goal 9.1.1 Maximize efficient use of the city's employment land

d) Identify and protect the city's employment areas by adopting regulations that promote an appropriate mix of uses in industrial and other employment zones.

The applicant states that adopting the requested interpretation will help protect and conserve industrial land for higher intensity industrial uses.

The Director concurs. Beaverton has limited industrially zoned land to provide jobs and space for growing businesses to expand. Commercial and service-related uses such as BCRC that are primarily characterized by patronage from the general public are ideally located in commercial areas.

Development Code

10.20 Interpretation and Application of Code Language.

The Director recognizes the extensive discussion of this section provided by the applicant (Exhibit 2.1).

The Director concurs that the Director's Interpretation application laid out in BDC Section 40.25 is the appropriate mechanism for requesting an interpretation of the BDC in this case.

10.50 Authorization for Similar Uses.

The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director's Interpretation, as provided by Section 40.25.

The Applicant has provided an extensive discussion of this provision (Exhibit 2.1).

The Director notes that the Director's Interpretation application laid out in BDC Section 40.25 identifies the criteria for approval of that application. The Director's discussion of the provisions of Section 10.50 are encompassed in the response to criterion 4 below.

20.10.10 Purpose

* * * *

2. Community Service (CS)

The CS District is intended to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Beaverton's major streets carry high traffic volumes and allow for larger scale, more intense commercial uses such as regional retail and fast food restaurants with drive-up windows, as well as smaller scale retail and service uses. Uses like the BCRC serve a similar customer and operate within the range of scales of other uses located along the city's major streets.

60.55 Purpose and Intent.

It is the purpose and intent of this chapter to establish design standards and performance requirements for all streets and other transportation facilities constructed or reconstructed within the City of Beaverton.

Some public comments received raise concerns about the potential for traffic impacts related to BCRC operations. The applicant retained an engineering firm to conduct an analysis of transportation impacts (Exhibit 2.2). This analysis concluded that the roadways operate and will continue to operate acceptably, meeting City and ODOT standards with no identifiable crash patterns that are likely to be affected by site activity. The City Traffic Engineer has reviewed the applicant's analysis and concurs that the impact on surrounding streets and intersections is insignificant.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. *When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.***

According to the applicant, the proposed use is a BCRC, which is not expressly identified in the BDC as a Permitted, Conditional or Prohibited Use. The applicant's response to Criterion No. 4 refers to the response provided to BDC Section 10.50, where the applicant explains that a BCRC is a permitted use because it is substantially similar to a "Service Business or Professional Services" use, and is not a "Recycling Center."

The Director also includes the following discussion, which addresses in detail the two findings required by this criterion and informed by the provisions of Section 10.50. First, that the BCRC is not already expressly identified in the Development Code, and second, that the BCRC is substantially similar to another use currently allowed in the CS zoning district.

As the applicant explains, the BCRC is an establishment operated for the purpose of receiving redeemable beverage containers from customers, providing applicable rebates for these containers, and consolidating these containers for transport to a larger facility for further processing. The BCRC is in fact a new type of recycling business in Oregon. In 2017 the Oregon Legislature enacted ORS 459A.735 to provide a convenient location for customers to redeem beverage containers, and allow retailers of beverages sold in redeemable containers to themselves opt out of redeeming those containers when a business like the BCRC operates within the parameters laid out in ORS 459A.

Public comments in response to this Director's Interpretation application and briefing to LUBA in a previous appeal of the city's approval of the BCRC's design review application assert that the BCRC is a "Recycling Center," which is an expressly identified conditional use in the Industrial (IND) zone. BDC 20.15.20. There, Recycling Centers are grouped with "Salvage Yards" and "Solid Waste Transfer Stations." Since "Recycling Center" is not a defined term in Chapter 90, the Director must determine if what opponents characterize as a "recycling center" in the CS zone is the same thing as the Recycling Center grouped together with Salvage Yards and Solid Waste Transfer Stations as a conditional use in the IND zone.

Of the three terms, only Salvage Yards has a definition in Chapter 90:

A place out-of-doors where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled, including vehicle wrecking yards, building wrecking yards, used lumber yards and places of storage of salvaged building; wrecking and structural steel materials and equipment, but not including rummage, yard or garage sales of no more than four (4) days duration. Three or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard.

The statement that "[t]hree or more dismantled or inoperable vehicles on one lot shall constitute a salvage yard" serves a different purpose from the rest of the definition. It does not mean that salvage yards are typically characterized by three or more dismantled or inoperable vehicles. The focus of the sentence is on the dissonant impacts of even a small collection of dismantled or inoperable vehicles, which justify confining the collection to industrial zones.

BDC 10.20.6.B states that when a term is not defined in Chapter 90, it has the meaning set forth in Webster's Third New International Dictionary, 1993. The dictionary entry for 'recycle' is as follows:

to pass again through a cycle of changes or treatment <an industrial plant. . . cooling water through cooling towers as many as 50 times – J.R. Whitacker & E. A. Ackerman>; esp : to feed back continuously in a laboratory or industrial operation or process for further treatment

Generally speaking, uses are conditional when they have external impacts that exceed those of permitted uses in the zone. "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" are conditional uses in a zone where Storage Yard; Fuel Oil Distributors; Bulk Fuel Distributors; Heavy Equipment Sales; Manufacturing, Fabricating, Assembly, Processing, Packing, and Storage; and Warehousing are among the permitted uses. This context indicates that the scale of what is meant by "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" in the IND zone is completely different from a BCRC use, which has almost no external impacts compared to the permitted uses in the zone and is on a much smaller scale. While BCRC's use is recycling, the term "recycling" in current usage is associated with a broad range of activities that are permitted in every zoning district today. The term "Recycling Center," as it is used in the BDC, does not include any and all recycling activities that occur in the city.

For example, many homes have areas for collecting and sorting recyclable materials under the kitchen sink, or in a pantry or garage. There are even consumer products marketed as "recycling centers" designed for home use (see Exhibit 1.5). Office buildings, restaurants, schools and parks all routinely collect, sort, and package recyclable materials. It would be absurd to suggest that these activities were intended to be confined to IND districts, and subject to a conditional use review.

While the BCRC is a commercial facility that operates at a larger scale than the widely distributed recycling activity described above, it is equally, if not more, distant on the recycling spectrum from large operations that receive recyclables, mostly transported by truck, primarily from commercial haulers. Patrons of the BCRC bring in bags of redeemable containers that have accumulated through ordinary household or commercial use over a period of time, perhaps a few weeks or a month (or maybe after a New Year's Eve party).

ORS 459A-735 explicitly establishes requirements for the number of containers per customer that must be accepted by facilities under the program. Bottle drop locations may set a maximum number of containers to be accepted per customer per day, but that maximum must be at least 350 for automated sorting, and 50 containers for hand-sorting, as well as drop off of at least 125 bagged containers. The BCRC meets statutory requirements by allowing daily container redemption up to 350 auto-sort and 50 manual sort.

Environmentally Conscious Recycling ("ECR") is a regional example of a large recycling facility in Multnomah County (Exhibit 1.4). It may be accessed by the general public for recyclable materials and construction debris drop-off, but much of the incoming materials

is from trucks operated by the business itself or other businesses with the primary function of solid waste disposal, or a need to dispose of large quantities of debris and recycling. The facility processes 90,000 tons of material per year, and is 9.2 acres in size, with a significant amount of the unenclosed lot area devoted to separating recyclable from non-recyclable material. Equipment on site includes:

a wood grinder, metal shear/baler, cardboard baler, plastic baler, rock crusher, box-spring recycling machine. ECR has four excavators and four front wheel loaders, four forklifts for handling incoming and outgoing materials.

ECR dwarfs the BCRC. The definition of Salvage Yard in BDC Chapter 90, above, matches in scale the operations of ECR, not the BCRC.

Since it is clear that the BDC term "Recycling Center" cannot be interpreted to include recycling activity of all sizes and shapes, a Director's Interpretation is required to articulate the scope of the term. The Director's Interpretation in this case must also determine whether the operations of the BCRC fall within the designated scope.

A number of factors and characteristics can be used to assess the scale and intensity of a use:

- The users or customers that the establishment serves; the general population, other businesses, industrial businesses, etc.;

The BCRC is explicitly intended to provide the general public with a convenient location to return redeemable bottles, rather than a location for medium or large-scale businesses to use.

- Noise, odors, and other potential impacts, whether the use is outdoors or enclosed;

The BCRC is fully enclosed, allowing potential noise and odors to be limited. In addition, the Beaverton City Code Chapter 5.15 and Section 5.05.050 establish limitations on noise and odors, respectively. Opponents complain that there are bottle and can crushing facilities on the subject property. While that is true, their concern is unfounded and does not support the argument that the BCRC is an industrial use. Similar crushing activities have been occurring for years and continue to occur at supermarket machines, and the number of bottles and cans crushed on site at the BCRC does not increase external impacts on neighboring properties compared with ongoing grocery store operations.

- The volume and type of traffic generated by the use; private passenger vehicles, small commercial trucks, large tractor trailer trucks;

As noted above, the BCRC serves the general public, and as such the majority of the traffic associated with the facility is private passenger vehicles; large trucks pick up sorted and compressed containers a few times a week. Based on the data presented in the traffic analysis (Exhibit 2.2, Figure 3), the facility is generating approximately 7.05 trips per 1000 gross square feet of building area (gsf) during the PM peak hour. For

context, here are the same PM peak hour trip generation numbers for other land uses (ITE Trip Generation Manual, 9th Edition) allowed in the Community Service Zoning District, trips per 1,000 gsf:

Free-standing discount store	4.98 trips
Quality restaurant	7.49
Discount supermarket	8.34
Pharmacy with drive-through	9.91
Daycare	12.34
Drive-in bank	24.30
Fast food with drive-through	32.65

All of these factors and characteristics indicate BCRC operations are distinct from both the BDC-defined Recycling Center and the regional examples of recycling centers and solid waste transfer stations that the BDC regulates as conditional uses in IND districts.

The Director notes a supplementary submission from the applicant (Exhibit 2.5), that indicates the zoning district locations of every BCRC in the State of Oregon. While this Director's Interpretation must interpret the BDC, where other jurisdictions determined a BCRC would be most appropriate provides additional context. Twenty-one out of 24 jurisdictions have approved locating a BCRC in a commercial or mixed-use zoning district.

Based on the submission of the applicant and the discussion above, the Director concludes that the term "Recycling Center," as it is used in the BDC, does not include BCRC operations.

The second question to evaluate is whether the BCRC is substantially similar to a use permitted in the Community Service (CS) zoning district. The Director does not believe the inclusion of the word "substantially" indicates that the BCRC must be of the precise type and nature of an existing business or that the determination of "substantially similar" must rest upon a comparison to a single, other business. Rather, given the general use nature of the CS district, "substantially" in this context means "more or less," where the focus is on the intensity of activity and the external impacts generated by the activity.

The CS district is one of four commercial zoning districts included in the BDC. It is a general purpose commercial district that allows a wide range of businesses and service uses, as well as residential use. It is mapped along regional corridors such as Beaverton Hillsdale Highway, Cedar Hills Boulevard, and other relatively dense, high traffic locations. As discussed in response to criterion 3, the purpose of the CS District, stated in BDC 20.10.10, is:

... to provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets.

Businesses like retail stores with no limitation on size; eating and drinking establishments, including fast food drive-up windows; and gas stations are all allowed. Service businesses such as health clinics, real estate offices, and health clubs are also allowed.

Many allowed uses in the CS district have characteristics similar to a BCRC. For example, a drive-up pharmacy restaurant can generate 9.91 trips per 1000 gsf in the pm peak hour, while the BCRC traffic study concludes that it will generate 7.05 trips per 1000 gsf. A number of permitted uses also draw users from a wide geographic area. Large shopping centers, for example, typically draw customers from a regional radius. These uses typically involve an in-person exchange of goods or services for money at an establishment open to the public.

Most importantly, the specific activity of beverage container redemption that takes place at the BCRC facility has been part of ordinary grocery store operations since the bottle bill was passed in 1971, and is permitted in the CS district. Even today, while the presence of the BCRC has allowed grocery stores in the area to opt out of container redemption, stores selling beverages in redeemable containers that are not located within the designated radius of a BCRC continue to be required by state law to redeem these containers for customers.

As stated above, the CS Zoning District allows a wide variety of uses, including “Service Businesses and Professional Services” as discussed in the applicant materials, “Eating and Drinking Establishments” and “Retail Trade.” While staff recognizes that the BCRC is substantially similar to uses included in the two former categories, the specific activity of container redemption has long been associated with grocery store operation, which falls into the “Retail Trade” use category.

Since the specific activity (container redemption) is substantially similar, in type, scale and effect, to many other uses currently allowed in the CS district, the criteria for approval are satisfied.

Therefore, the Director finds that the proposal meets the criterion for approval.

5. *The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.*

All applicable submittal requirements for the Director’s Interpretation application have been submitted. The application was deemed complete by the city on January 10, 2018.

Therefore, the Director finds that the proposal meets the criterion for approval.

6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

The necessary documents related to the Director’s Interpretation have been submitted. The earlier Design Review decision issued by the city in case file DR2017-003 for OBRC (building and site remodel) subject to review under separate criteria

identified in BDC Section 40.20.15.1.C. is affirmed with findings that support the use as permitted outright by the zone.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated herein, the Community Development Director hereby makes this interpretation in support of the applicant's BCRC, finding it to be substantially similar to *Service Business / Professional Service*, a use permitted outright in the Community Service zone under Chapter 20, Section 20.10.20 of the Beaverton Development Code.



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wmnorthwest.com/landfill/hillsboro2.htm

Hillsboro Landfill and Tualatin Valley Waste Recovery

3205 SE Minter Bridge Road - Hillsboro, OR 97123 | 503-640-9427

Hillsboro Landfill and Tualatin Valley Waste Dry Waste Recovery Facility are located on the same property, allowing customers easy access to recycling and waste disposal. The landfill and recycling centers accept different materials. Please come by during our new, extended hours!

NOTICE - All demolition debris loads must comply with DEQ asbestos rules and regulations.

The Oregon DEQ now requires an owner or operator to have an accredited inspector perform an asbestos survey before demolishing a residential building built prior to January 1, 2004. More information is available on the [DEQ website](#).

Hillsboro Landfill

Hillsboro Landfill provides customers with professional, safe and convenient disposal services. The landfill is engineered with overlapping environmental protection systems that meet or exceed EPA Subtitle D Solid Waste Disposal Facility regulations. Systems include engineered liners and covers, leachate collection and removal, and landfill gas collection and control. This "special purpose" landfill accepts a variety of material for disposal, however it does not accept putrescible waste (i.e. food waste), or hazardous waste. Hillsboro Landfill is permitted to accept and solidify free liquids by permit/appointment only.

Operation Hours :

6:00 AM - 4:00 PM | Monday - Friday
8:00 AM - 2:00 PM Asbestos and ACM | Monday - Friday
8:00 AM - Noon | Saturday

Closed Sunday

Office

8:00 AM - 4:00 PM | Monday - Friday

Hillsboro Landfill Rates

Waste from within
Portland Metro Boundries

Waste from outside
Portland Metro Boundries

Acceptable Material

- Asbestos - Friable & Non-Friable
- Auto Shredder Waste

Tualatin Valley Waste Recovery

This ultra-green recycling facility provides businesses and the community with professional sorting and recovery services that dramatically reduce landfill waste. The Tualatin Valley Waste Recovery (TVWR) facility repurposes construction and demolition debris as part of a regional effort to achieve aggressive waste reduction goals.

Our state-of-the-art recovery center conforms to Portland Metro EDWRP regulations and can help you reach your sustainability goals and LEED certification. Processing approximately 400 tons per day, dry material is sorted onto two assembly lines, which separate plastic, wood, metal, cardboard, paper and asphalt shingles. Most of this material is sent to local recycling markets for reuse. Wood is ground on-site and then reprocessed into "hogged fuel," creating steam for energy. Asphalt shingles are reused to create road base on-site. TVWR has a current recovery rate of about 40%. This facility is also a model for Waste Management programs nationwide as the company partners with businesses and local governments to divert materials from landfills and turn waste streams into value streams.

Operation Hours :

6:00 AM - 4:00 PM | Monday - Friday
8:00 AM - 2:00 PM Asbestos and ACM | Monday - Friday
8:00 AM - Noon | Saturday

Closed Sunday

Office

8:00 AM - 4:00 PM | Monday - Friday

TVWR Rates

LEED Gold Certified Building

TVWR was built in 2009 and awarded LEED Gold Certification. The

- Clean & Contaminated Soil
- Construction & Demolition Wastes
- Disposal of Lathe and Plaster
- Drummed Waste with Solids
- Industrial Process Waste
- Liquid Waste by appointment only
- Residual Waste from a Dry Waste Material Recovery Facility
- Sludge
- Wood Waste

Unacceptable W astes

- Batteries
- Biosolids
- Electronic Waste
- Explosives
- Hazardous Waste
- Infectious Waste
- Putrescible Waste (e.g. food waste)
- Radioactive Waste
- Tires
- White Goods (e.g. refrigerators, air conditioners, etc.)

NOTICE

All demolition debris loads must comply with DEQ asbestos rules and regulations. The Oregon DEQ now requires an owner or operator to have an accredited inspector perform an asbestos survey before demolishing a residential building built prior to January 1, 2004. More information is available on the DEQ website .



Disposal Requirements for
Asbestos-Containing W aste Material
- Click Here

Operation Hours :

6:00 AM - 4:00 PM | Monday - Friday
8:00 AM - 2:00 PM Asbestos & ACM | Monday - Friday
8:00 AM - 2:00 PM Saturday
Closed Sunday

Office

8:00 AM - 4:00 PM | Monday - Friday

All customers that deliver asbestos need to complete
an ASN-4 Form.

Click here to download the form

Need bags and labels?

Hillsboro Landfill now offers the following items:

- Asbestos Bags - \$2.50 per bag
- Duct Tape - \$ 20.00 per roll
- Labels (printed with customer info) - \$0.30 per label

Now Accepting Liquid W aste

Hillsboro Landfill now accepts liquids for solidification and disposal Monday through Friday. Advanced scheduling is required. Please call us at 503-640-9427 for additional information.

Holidays

New Years Eve - 8:00 AM to 12 noon
New Years Day - Closed

building's unique design incorporates innovative features, which save energy and resources including:

- Interior lighting has motion control sensors and timers to minimize electrical usage
- A translucent roof allows for natural lighting and energy savings
- Rainwater is harvested into a 140,000 gallon tank and reused for cleaning, dust control and fire suppression
- Fresh air constantly circulates through the facility to protect air quality

Residential Drop-Off Area

Our residential drop-off area is open to the public. We accept commingled dry waste or separated material from household projects and clean ups including; wood, metal, concrete, cardboard newspaper, magazines, batteries, motor oil, carpet pad, rigid plastics, glass, tin, yard debris, tires, electronics and white goods.

Acceptable Material

- Aluminum/Tin Cans
- Construction & Demolition (C&D)
- Disposal of Lathe and Plaster
- Debris Scrap Metal
- Asphalt
- Container Glass
- Scrap Paper
- Car Batteries
- Magazines
- Tires
- Corrugated Cardboard
- Motor Oil
- White Goods
- Clean Soil
- Newspaper
- Wood
- Concrete
- Plastic Containers #1.7
- Yard Waste

Unacceptable W astes

- Asbestos - Friable/Non-Friable
- E&P Wastes
- Medical Waste
- Auto Shredder Residue
- Explosives
- Municipal Solid Waste (MSW)
- Biosolids
- Hazardous Waste
- NORM/radioactive
- CERCLA Wastes
- Industrial and Special Waste
- Waste Containing Free Liquids

Additional Services Provided

- LEED documentation for construction and demolition projects
- Secure and certified document destruction services

For information about Hazardous Waste Disposal Click Here .

If you have questions or need more information, please e-mail us at landfill@wmnorthwest.com .

Holidays

New Years Eve - 8:00 AM to 12 noon
New Years Day - Closed
Memorial Day - 6:00 AM - 4:00 PM
July 4th - Closed
Labor Day - 6:00 AM - 12 noon
Thanksgiving Day - Closed
December 24 - 8:00 AM to 12 noon
December 25 - Closed

Contact

TSC Portland
7227 NE 55th Avenue
Portland, OR 97218

1-800-685-8001 or
1-800-963-4776
TSCPortland@wm.com

Memorial Day - 6:00 AM - 4:00 PM
 July 4th - Closed
 Labor Day - 6:00 AM - 12 noon
 Thanksgiving Day - Closed
 December 24 - 8:00 AM to 12 noon
 December 25 - Closed

Payment Methods:

Cash, Business Checks (No Personal Checks), Visa, Mastercard and Debit Cards (with Visa and Mastercard logos)

Pay your Hillsboro Landfill Disposal Account On-Line with the WM ezPay Program! All you have to do is click this icon:



Download the brochure



Contact

TSC Portland
 7227 NE 55th Avenue
 Portland, OR 97218

1-800-685-8001 or
 1-800-963-4776
TSCPortland@wm.com



Download the brochure

Español - Descarga el folleto

Google Maps Metro South Transfer Station





Imagery ©2018 Google, Map data ©2018 Google 100 ft



Metro South Transfer Station

3.8 ★ ★ ★ ★ · 39 reviews

Recycling Center

 2001 Washington St, Oregon City, OR 97045 oregonmetro.gov (503) 234-3000 Open now: 7AM–6PM ▼

Popular times Tuesdays ▼

 A little busy

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses

The following policies apply to Community Commercial areas, in addition to policies under Goal 3.7.1.

Policies:

- a) Allow commercial uses at a range of scales, including large-format retail, to address community needs.
- b) Allow limited new automotive services (e.g. gas stations, car wash, and car repair) where compatible with adjacent uses and where the design of the site and building or structure promote a quality pedestrian environment along the street.
- c) Prohibit land-intensive vehicle sales and service uses and uses requiring extensive outdoor storage.
- d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking.
- e) Require multimodal or pedestrian connections based on block size standards to encourage a pattern of development that can be easily navigated by foot or bike.
- f) The Community Commercial designation may be applied in areas along arterial roads with relatively high visibility and auto accessibility that also provide pedestrian, bicycle, and/or transit connections to the surrounding community.

